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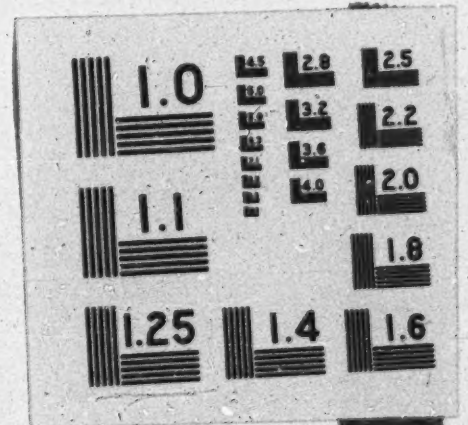
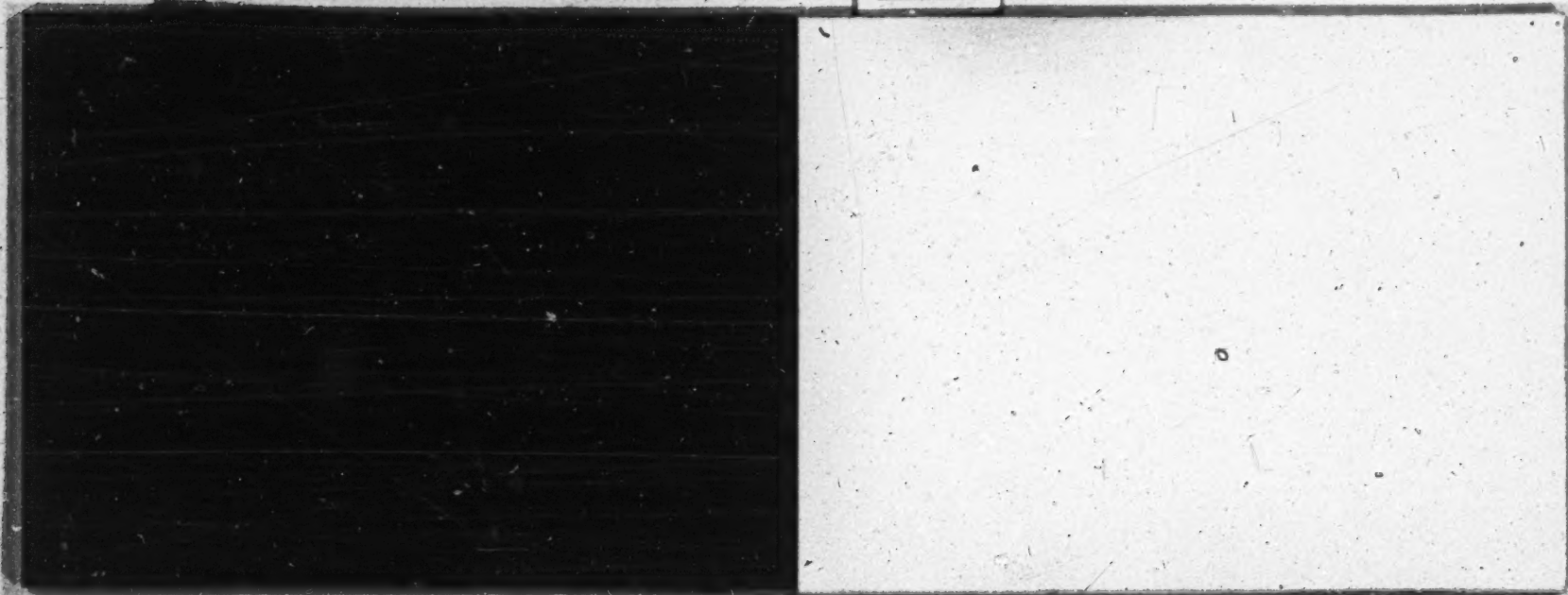
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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 90

CARLOTA BENTLEY SAMPAYO, PETITIONER,

vs.

THE BANK OF NOVA SCOTIA

**ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT**

PETITION FOR HABEAS CORPUS FILED MAY 21, 1940.

HABEAS CORPUS GRANTED OCTOBER 14, 1940.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 90

CARLOTA BENITEZ SAMPAYO, PETITIONER,

vs.

THE BANK OF NOVA SCOTIA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT

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[fol. 1] [Captions omitted]

[File endorsement omitted]

[fol. 2]

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF PUERTO RICO**

DEBTOR'S PETITION—Filed October 13, 1938

**For Composition or Extension under Section 75 of the
National Bankruptcy Act**

Bankruptcy No. 1435

To the Honorable Judge of the District Court of the United
States for the District of Puerto Rico:

The Petition of Carlota Benitez Sampayo of Ponce,
Puerto Rico, in the county of Ponce, Puerto Rico and Dis-
trict and Territory of Puerto Rico,

Respectfully Represents: That she is primarily bona fide
personally engaged in producing products of the soil, the
production of poultry and livestock and the production of
poultry products in their unmanufactured state and that
the principal part of her income is derived from one or
more of the foregoing operations, as follows: production
of sugarcane and the processing of same into sugar and
molasses, production of cattle, poultry and sale of eggs;
that such operations occur in the counties of Ponce and
Vieques (District of Humacao), within said judicial dis-
trict; that she is unable to meet her debts as they mature
and that she desires to effect a composition or extension
of time to pay her debts under section 75 of the Bankruptcy
Act.

That the schedule hereto annexed, marked A (1, 2, 3, 4,
5), and verified by your petitioner's oath, contains a full
and true statement of all her debts, and (so far as it is
possible to ascertain) the names and places of residence of
[fol. 3] her creditors and such further statements concern-
ing said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked B (1, 2, 3, 4,
5, 6) and verified by your petitioner's oath, contains an
accurate inventory of all her property, both real and per-

sonal, and such further statements concerning said property as are required by the provisions of said act.

Wherefore Your Petitioner Prays that her petition may be approved by the Court and proceedings had in accordance with the provisions of said section.

(Sgd.) Carlota Benitez Sampayo, Debtor; Address:
No. 10 Mendez Vigo St., Ponce, Puerto Rico.

Duly sworn to by Carlota Benitez Sampayo. Jurat omitted in printing.

[fols. 4-65] Petition approved and case referred to Enrique Igaravidez, Esq., Conciliation Commissioner.

San Juan, Puerto Rico, October 13, 1938.

(Sgd.) Martin Travieso, Acting Judge.

[fols. 66-120] IN UNITED STATES DISTRICT COURT

ORDER APPROVING PETITION AS PROPERLY FILED UNDER SECTION 75, AND REFERRING CASE TO CONCILIATION COMMISSIONER—Filed October 13, 1938

At San Juan, Puerto Rico, on the 13th of October, 1938, before the Honorable Martin Travieso, Acting Judge of said Court, the petition of Carlota Benitez Sampayo praying that she be afforded an opportunity to effect a composition or an extension of time to pay her debts under Section 75 of the Bankruptcy Act, having been heard and duly considered, is approved as properly filed under said section.

It is further ordered, that upon the petition filed in this Court by said Debtor on October 13th, 1938, said matter be referred to E. Igaravidez, one of the Conciliation Commissioners of this Court, to take such further proceedings therein as are required by said Act; and that the said Carlota Benitez Sampayo, shall submit to such orders as may be made by said Conciliation Commissioner or by this Court relating to said proceedings for a composition or extension.

Witness, the Honorable Martín Travieso, Acting Judge of said Court, and the seal thereof, at San Juan, P. R. this 13th day of October, 1938.

Lulu G. Donohue, Clerk, by (Sgd.) Matilde Shepard,
Deputy. (Seal.)

[fol. 121] IN UNITED STATES DISTRICT COURT

AMENDMENT OF PETITION UNDER SECTION 75 (S)—Filed
November 30, 1938

To the Honorable the Judge of this Court:

The Petition of Carlota Benitez Sampayo respectfully shows:

I. That on the thirteenth day of October, 1938, petitioner filed her petition for a composition or extension under Section 75 of the Bankruptcy Act, which said petition was thereafter duly approved and the proceeding referred to Honorable Enrique Igaravidez, one of the Conciliation Commissioners of this Court.

II. That petitioner has failed to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by said composition or extension proposal.

Wherefore, petitioner hereby amends her said petition pursuant to the provision of Section 75 (s) of the Bankruptcy Act and asks to be adjudged a bankrupt, and for such other and further relief to which she may be entitled.

San Juan, Puerto Rico, November 30, 1938.

(Sgd.) Carlota Benitez Sampayo, Debtor. Geigel & Silva, by J. E. Geigel, Attorneys for Debtor, The Chase National Bank Bldg., P. O. Box 1359, San Juan, P. R.

Duly sworn to by Carlota Benitez Sampayo. Jurat omitted in printing.

[fol. 122] IN UNITED STATES DISTRICT COURT

PETITION FOR APPRAISAL, ETC.—Filed November 30, 1938

Comes now Carlota Benitez Sampayo, Debtor in the above entitled proceedings, through her undersigned attorneys and respectfully shows and prays:

1. That on this date and in the course of the first meeting of creditors called pursuant to her petition filed herein, your petitioner submitted an extension proposal or plan

covering all her debts and having failed to obtain the acceptance of a majority in number and amount of her creditors, whose claims are affected by said extension proposal, your petitioner proceeded to amend and did amend her original petition filed herein, by asking to be adjudged a bankrupt in accordance with and pursuant to the provisions of Section 75 (s) of the Bankruptcy Act and as required by the jurisprudence interpreting same.

2. That your petitioner desires that all of her property wherever located, whether pledged, encumbered, or unencumbered exemptions, or unencumbered interest or equity in her exemptions as prescribed by the laws of the United States and of Puerto Rico and, in particular, the share in the conditional or benefit payments already accrued or accruing to your petitioner from the 1937-1938 and subsequent crop years as under the Sugar Act of 1937 as may be determined by the U. S. Secretary of Agriculture, be set aside to her, and that she be allowed to retain possession or be placed in possession of all of the remainder of her property, including her unencumbered exemptions, under the terms and conditions provided in said section.

Wherefore, Carlota Benitez Sampayo prays the Hon. Court to enter an order providing as follows:

(a) That all of her property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, at its present fair and reasonable market value under the jurisdiction of this Hon. Court, by appraisers designated and appointed as provided in said Act.

(b) That her unencumbered exemptions, or unencumbered interest or equity in her exemptions, as prescribed by the laws of the United States of America and of Puerto Rico and the rules for the case made and provided and, in particular, the share in the conditional or benefit payments already accrued or accruing to your petitioner from the [fols. 124-130] 1937-38 and subsequent crop years, under the Sugar Act of 1937 and may be determined by the U. S. Secretary of Agriculture, be set aside to her.

(c) That she be allowed to retain possession or be placed in possession of all of the remainder of her property, wherever located, including her unencumbered exemptions and, in particular, the conditional or benefit payments already

accrued or accruing to your petitioner from the 1937-1938 and subsequent crop years, under the Sugar Act of 1937, as may be determined by the U. S. Secretary of Agriculture pursuant to the provisions of said Sugar Act and under the terms and conditions provided in said Section 75 (s).

San Juan, P. R., November 30, 1938.

(Sgd.) Carlota Benitez Sampayo, Debtor. Geigel & Silva, by (Sgd.) J. E. Geigel, Attorneys for Debtor.

Duly sworn to by Carlota Benitez Sampayo. Jurat omitted in printing.

[fol. 131] IN UNITED STATES DISTRICT COURT

PROOF OF DEBT—Filed November 23, 1938

In the city of San Juan, Puerto Rico, on this 23rd day of November, 1938 came Jorge Luis Cordova, of legal age, married, Lawyer, and resident of this city, and made an oath and said:

1. That he is one of the attorneys for The National City Bank of New York, a banking association duly organized and existing under the laws of the United States, with principal office at 55 Wall Street, New York, New York; that this Proof of Debt is presented by him and not by one of the officers of the said Bank because the claim is one pertaining to the New York Office of the said Bank and none of the officers of the Puerto Rican Branches of the Bank has any relation therewith nor any knowledge of the facts relative to said claim, and that none of the officers of the New York Branch who are familiar with the facts are present in Puerto Rico.

2. That he is duly authorized to make this proof and says [fol. 132] that Carlota Benitez, the debtor who has filed a petition under Section 75 of the Bankruptcy Act, is justly and truly indebted to the said National City Bank of New York in the sum of \$2208.13, with interest thereon at 8% per annum for May 27, 1931, until full payment, and in the sum of \$14,520.22, with interest thereon at 8% per annum from June 30, 1931, until full payment and in the further

sum of \$350.00 plus interest thereon at 5% per annum from April 18, 1938, until full payment.

3. That the consideration for the said debt is a judgment recovered by the National City Bank of New York against the said Carlota Benitez, the debtor herein, in the District Court of San Juan, on April 18, 1938, certified copy of which is attached hereto and made to form a part of this Proof of Debt.

4. That no part of said judgment has been paid and that, according to deponent's information and belief, the only security held by The National City Bank of New York for said debt is an attachment levied by the National City Bank of New York, in the action wherein the said judgment was obtained, covering the interest of Carlota Benitez and others in the properties known as "Central Playa Grande", Vieques, P. R., and in a property known as "Comunidad", located at Vieques, P. R., wards Llave, Mosquitos, Florida, Mulas, Puerto Diablo, Puerto Real, and Campana, having an area of 6542.275 cuerdas, which attachment is subjected to the previously recorded mortgages held, according to deponent's information, by The Bank of Nova Scotia.

San Juan, Puerto Rico, this 23rd. day of November, 1938.
[fol. 133] (Sgd.) Jorge L. Córdova, Deponent; Fidler, Cordova & MacConnell, by (Sgd.) H. S. McConnell, Attorneys for The National City Bank of New York. Affidavit No. 10280.

Sworn to and subscribed before me by Jorge Luis Cordova, of legal age, married, resident of San Juan, P. R., lawyer and personally known to me at San Juan, P. R., this 23rd day of November, 1938.
(Sgd.) L. E. Dubon, Notary Public. (Seal.)

25¢ stamp cancelled by notary seal.

IN UNITED STATES DISTRICT COURT

PROOF OF UNSECURED DEBT—Filed November 30, 1938

At San Juan, in said district of Puerto Rico, on the 30th day of November, A. D. 1938, came the law firm Geigel & Silva, represented by Guillermo Silva, Esq., of San Juan,

in the county of San Juan, in said district of Puerto Rico, and make oath and says that Carlota Benitez Sampayo, the person by whom a petition in proceedings for composition, or extension under Section 75 of the Bankruptcy Act has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of \$500.00; that the consideration of said debt is as follows: [fol. 134-173] Professional services rendered as per her request in legal proceedings before the District Court of the United States for Puerto Rico.

That no part of said debt has been paid; that there are no set-offs or counterclaims to the same; and that deponent has not, nor has any person by this order, or to his knowledge or belief, for his use, had or received any manner of security of said debt whatsoever. That this claim is free from usury.

(Sgd.) Guillermo Silva.

Subscribed and sworn to before me this 30th day of November, A. D. 1938, by Guillermo Silva, of legal age, attorney at law, and a resident of San Juan, to me personally known.

(Sgd.) Enrique Igaravidez, Conciliation Commissioner.

[fol. 174] IN UNITED STATES DISTRICT COURT

MOTION FOR DISMISSAL—Filed December 1st, 1938

Now comes the Bank of Nova Scotia, represented by its undersigned counsel, and to the Court states:

I

That Carlota Benitez Sampayo, petitioning Debtor herein, filed her voluntary petition under Section 75 of the Bankruptcy Act, on October 13th, 1938, and this Court on the same day approved said petition as being properly filed and referred it to the United States Conciliation Commissioner.

II

That the Bank of Nova Scotia had no notice of said petition until after its approval as aforesaid.

III

That the Bank of Nova Scotia is a creditor of said petitioning debtor.

IV

That the petitioning debtor is not primarily bona fide personally engaged in producing products of the soil, or engaged in dairy farming, the production of poultry or live-[fol. 175] stock, or the production of poultry products or livestock, products in their unmanufactured state, nor is the principal part of any income received by her derived from any one or more of the foregoing operations.

That said petitioning debtor is not a "farmer" as defined in Section 75 of the Bankruptcy Act.

V

That this Court does not have jurisdiction to entertain the proceedings debtor.

VI

That the petition filed herein is not filed in good faith, but is filed to defraud the Court and interfere with proceedings now pending before the Court.

VII

That the plan offered by the petitioning debtor is unfair, unequitable, contrary to law, impracticable, and was not presented in good faith.

VIII

That the petitioning debtor has never been in possession of the properties described in her petition.

Wherefore, it is prayed that the petition herein and all proceedings had thereunder be dismissed with costs to the petitioning debtor.

[fol. 176] San Juan, Puerto Rico, December 1st, 1938.

Brown, Gonzalez & Newsom, by Walter L. Newsom,
Counsel for The Bank of Nova Scotia.

Notified with copy, this 1st day of December, 1938. Enrique Igaravidez, U. S. Conciliation Commissioner; Geigel & Silva, per Juan Enrique Geigel, Attorneys for Carlota Benitez Sampayo.

IN UNITED STATES DISTRICT COURT

MOTION TO STRIKE THE PETITION OF THE BANK OF NOVA
SCOTIA—Filed December 12, 1938

Now comes Carlota Benitez Sampayo, through her undersigned attorneys and to the Court states and prays:

1. That on or about November 28th, 1938, the Bank of Nova Scotia filed a pleading herein entitled "Petition of the Bank of Nova Scotia".

[fol. 177] 2. That your petitioner believes that said pleading should be stricken from the record on the grounds of vagueness, incompleteness, uncertainty, indefiniteness, and/or ambiguity.

3. That in case the entire petition is not stricken from the record, then allegations number X, XI, XII and XIII of said petition should be stricken from the record because they are irrelevant, immaterial and impertinent to the remedy that to the belief of the Bank of Nova Scotia, apparently pretends to obtain through the filing of said Petition.

Wherefore, Carlota Benitez Sampayo respectfully prays the Hon. Court to enter another providing as follows:

A. That the petition to which this motion to strike refers, be stricken from the record.

B. That in case said petition be not stricken from the record, that allegations number X, XI, XII, and XIII be stricken.

San Juan, Puerto Rico, December 9, 1938.

Geigel & Silva, by (Sgd.) Guillermo Silva, Attorneys
for Carlota Benitez Sampayo.

Notified with copy this — day of December, 1938. Brown, Gonzalez & Newsom, by Walter L. Newsom, Jr., Attorneys
for the Bank of Nova Scotia.

[fol. 178] IN UNITED STATES DISTRICT COURT

ANSWER AND OPPOSITION OF CARLOTA BENITEZ SAMPAYO TO
THE MOTION FOR DISMISSAL FILED HEREIN—Filed December 12, 1938

Comes now Carlota Benitez Sampayo, (to be hereinafter referred to as Respondent) through her undersigned attor-

neys, and in answer and opposition to the motion for dismissal filed by The Bank of Nova Scotia in the above captioned matter, respectfully alleges and shows:

1. For a first and independent defense, that the motion filed herein and to which this answer and opposition refers does not state any matter of law or equity entitling The Bank of Nova Scotia to the relief prayed for in said motion.

2. For a second and independent defense, that said The Bank of Nova Scotia has no status as creditor or party in interest in these proceedings, entitling it to apply for or obtain the relief prayed for, said The Bank of Nova Scotia appearing as a debtor and not as creditor in the schedules filed by Respondent herein, and not having appeared in these proceedings within the time and in the form and manner provided by the Bankruptcy Act, nor filed a proof of claim against Respondent.

3. That said The Bank of Nova Scotia, even though it did have the necessary status as a party in interest to these proceedings (which Respondent denies) could not raise is-[fol. 179] sues of fact which must be tried dehors the record, through motion to dismiss, said procedure being altogether inadequate and improper.

4. For a fourth and independent defense that said The Bank of Nova Scotia having made no defenses to Respondent's original petition on the merits and having furnished no excusable explanation for failure to interpose said defenses in the regular course and within the time fixed by the Bankruptcy Act, said The Bank of Nova Scotia, even though it were a party in interest in these proceedings, (which Respondent denies) would be guilty of laches which bar the granting of the relief prayed for in its motion to which this answer and opposition refers.

5. For a fifth and independent defense, that there having been a general reference of Respondent's original petition to the Hon. Conciliation Commissioner for the District since October 13, 1938 the issue of lack of good faith, if at all, should have been raised before the Hon. Conciliation Commissioner within the time fixed by the Bankruptcy Act and not belatedly before this Hon. Court after Respondent is proceeding under Section 75 (s).

6. For a sixth and independent defense, that the motion filed herein by said The Bank of Nova Scotia is equivalent to an opposition to the adjudication of Respondent on her voluntary petition filed under Section 75 (s) of the Bank- [fol. 180] ruptcy Act, such opposition not being contemplated or permitted under the provisions of the law and the rules for the case made and provided.

7. For a seventh and independent defense, that said The Bank of Nova Scotia, even if it did have the necessary status as party in interest in these proceedings, (which Respondent denies) is estopped from alleging that Respondent is not a farmer because of its having previously alleged and proved in Equity suit No. 2151 before this Court, in which said Bank is plaintiff and Respondent is one of the defendants, all the facts tending to establish that Respondent is and has always been a farmer as defined in Section 75 (r) of the Bankruptcy Act.

8. For an eighth and independent defense, that Respondent having filed before the Hon. Judge of this Court her amended petition praying to be adjudicated a bankrupt and having also filed her petition for appraisal on November 30, 1938, in accordance with the provisions of Section 75 (s) and the question of feasibility of her plan or extension proposal not having been seasonably raised before the Hon. Conciliation Commissioner for the District to whom the case was referred, while Respondent was proceeding under Section 75 (a) to (r), the issue being now raised "In Bankruptcy", said issue, if at all, may only be raised by a party in interest to these proceedings after the appraisal provided by said Section 75 (s) shall have been completed and [fol. 181] the Hon. Conciliation Commissioner shall have made a report to the Hon. Judge of this Court on said appraisal and as to the feasibility of said extension proposal or plan.

9. For a ninth and independent defense, that the allegation made by The Bank of Nova Scotia to the effect that Respondent is not a farmer is not sufficient to join issue on that jurisdictional question, in view of the fact that Respondent filed her original petition verified under oath and that same was promptly approved by the Hon. Judge of this Court, while the motion to which this answer and opposition refers has not been verified under oath.

10. For a tenth and independent, defense, that the motion filed herein by said The Bank of Nova Scotia and to which this answer and opposition refers may not be passed upon by this Hon. Court, it being that same contravenes the provisions of Section 18 (c) of the Bankruptcy Act requiring that all pleadings setting up matters of fact shall be verified under oath.

11. For an eleventh and independent defense, that the motion to which this answer and opposition refers has been set for hearing on motion day of this Court in contravention of the provisions of the law and the rules for the case made and provided and, in particular, of Rule 4 of this Court, now in full force and effect, which provides that motion day shall be dedicated to the hearing of only such petitions and other pleadings as can be disposed of exclusively upon [fol. 182] argument of counsel, while the motion to which this answer and opposition refers raises important questions of fact which may be only tried and decided, (if at all) in the course of a plenary hearing calling for the submission of voluminous documentary evidence and other proof.

12. For a twelfth and independent defense, that said The Bank of Nova Scotia has improperly joined in its motion to which this answer and opposition refers certain issues which (if at all) should be tried before the Referee, with issues that (if at all) may only be tried before the Hon. Judge of this Court, in violation of the law and the rules for the case made and provided.

13. For a thirteenth and independent defense, that the Findings of Fact and Conclusions of Law made by this Hon. Court pursuant to the final decree made and entered on August 22, 1938 in said Equity suit No. 2151, in which said The Bank of Nova Scotia is plaintiff and Respondent is one of the defendants, definitely and conclusively establish the status of Respondent as a farmer, as defined in Section 75 (r) and as of the time of the filing of Respondent's original petition herein, said finding of fact and conclusions of law and the final decree entered in said suit being res adjudicata as to said issue and binding as such on said The Bank of Nova Scotia.

And now answering to the merits and without waiver of any of the defenses hereinbefore interposed, Respondent respectfully represents to the Hon. Court:

[fol. 183]

I

Respondent admits allegation No. I of the motion to which this answer and opposition refers.

II

Respondent denies the allegation to the effect that said The Bank of Nova Scotia had no notice of the filing of her petition herein and of its approval by the Court. On the contrary, Respondent alleges that Walter L. Newsom, Jr., Esq., the attorney for said The Bank of Nova Scotia, was in the office of the Clerk of this Court shortly after Respondent had personally filed her petition herein with said Clerk. And Respondent further alleges that a few hours thereafter and while the said Walter L. Newsom, Jr., Esq., and Edward B. Lesesne, Esq., the Special Master appointed by this Court to handle the sale in execution of the pledges and other securities belonging to Respondent and other co-proprietors pursuant to the decree made and entered in said Equity suit No. 2151 before this Court, in which said The Bank of Nova Scotia is Complainant and Respondent is one of the defendants, J. Octavio Seix, Respondent's husband and attorney-in-fact, stated to said attorney for said The Bank of Nova Scotia and to the said Special Master Lesesne, in the presence of witnesses, that said sale in execution could not be legally held because Respondent had filed her petition under Section 75 of the Bankruptcy Act, said petition having been approved by the Hon. Judge of this Court and after considerable discussion over the subject, said Walter L. Newsom, Jr., informed Respondent's husband that he was not going and after considerable discussion over the subject, said Walter L. Newsom, Jr., informed Respondent's husband that he was not going to discuss the matter further with him. Whereupon said Special Master continued with the sale and thereafter a bid was submitted by said Walter L. Newsom, Jr., Esq., on behalf of said Bank, which bid was subsequently accepted by said Special Master and approved by this Hon. Court.

And Respondent further alleges that the record of this case shows that on or about October 31, 1938 the Hon. Enrique Igaravidez, Conciliation Commissioner for the District, notified said The Bank of Nova Scotia that the first meeting of creditors pertaining to the above captioned matter would be held at his office in the city of San Juan,

P. R. on the 12th day of November 1938, furnishing said Bank at the same time all the other information and data provided by Section 75 (e) of the Bankruptcy Act.

And Respondent further alleges that on or about that time, said The Bank of Nova Scotia received written notice from Respondent's husband, the said J. Octavio Seix, to the effect that her said petition had been filed and approved by the Hon. Judge of this Court.

III

Respondent denies that said The Bank of Nova Scotia has qualified as a creditor or party in interest in the above captioned matter and on the contrary alleges on information and belief that said The Bank of Nova Scotia has not even [fol. 185] filed a proof of claim herein, nor did it even appear and subject itself to the jurisdiction of this Hon. Court in these proceedings, through its Conciliation Commissioner, while Respondent was proceeding under Section 75 (a) to (r) of the Bankruptcy Act but, on the contrary, said The Bank of Nova Scotia continues up to this date maintaining that this Hon. Court is without jurisdiction to entertain the proceedings herein, although without any foundation in fact.

IV

Respondent denies the allegation to the effect that she is not primarily, bona fide, personally engaged in producing products of the soil or in the production of poultry or livestock products in their unmanufactured state. And Respondent further denies the allegation to the effect that the principal part of her income is not derived from one or more of the foregoing operations. On the contrary, Respondent alleges that she is and has been a farmer, as defined in Section 75 (r) of the Bankruptcy Act since the year 1917 and continuously up to this date.

Respondent admits that she is not engaged in dairy farming but alleges that she has never claimed to have been or to be thus engaged, or that it should be necessary for her to be engaged exclusively in that occupation or in conjunction with the other farming operations and agricultural pursuits in which she is engaged, in order for her to be able to qualify as a farmer under Section 75 (r).

[fol. 186] Respondent further alleges that having filed her original petition verified under oath under Section 75 (a)

to (r), in which petition all the jurisdictional facts appear and said petition having been promptly approved by the Hon. Judge of this Court, said The Bank of Nova Scotia may not overcome or even challenge her qualification as a farmer through allegations couched in the precise language of the statute, particularly when the motion in which said allegations have been incorporated has not been verified under oath.

Respondent further denies the general allegation to the effect that she is not a farmer and on the contrary alleges that said The Bank of Nova Scotia has repeatedly admitted in allegations and statements made before this Hon. Court under oath the necessary facts tending to show that Respondent qualified as a farmer, as defined in Section 75 (r) of the Bankruptcy Act. And Respondent further alleges that from the findings of fact, conclusions of law and opinion made by this Hon. Court pursuant to its decree entered on August 22, 1938 in said Equity suit No. 2151 filed before this Court and in which said The Bank of Nova Scotia is plaintiff and Respondent is one of the defendants, it appears that Respondent definitely qualifies as a farmer pursuant to the provisions of said Section 75 (r) and was such farmer at the time of the filing of her petition herein.

V

Respondent denies the allegation to the effect that this Hon. Court does not have jurisdiction to entertain the proceedings instituted herein by Respondent.

VI

Respondent denies that the petition filed herein has not been filed in good faith. And Respondent further denies that her said petition has been filed to defraud the Court and to interfere with proceedings now pending before this Court. On the contrary, Respondent alleges that it is the said Bank of Nova Scotia that is not proceeding in good faith. And Respondent further alleges that it is the motion for dismissal filed by said The Bank of Nova Scotia and to which this answer and opposition refers that constitutes a fraud on the Court and on the law, said motion for dismissal having been filed with ulterior motives and with a view of depriving Respondent from availing herself

of the remedies afforded to her as a farmer by said Section 75 of the Bankruptcy Act.

VII

Respondent denies that the extension proposal or plan offered by her in these proceedings is unfair, inequitable, contrary to law and impracticable. And Respondent further denies that said extension proposal or plan was not presented in good faith. On the contrary, Respondent alleges that her said extension proposal or plan filed herein as provided by law is undoubtedly one of the most reasonable and fair that has ever been prepared or offered by a farmer-debtor proceeding under Section 75. And Re-[fol. 188] spondent further alleges that her said extension proposal or plan includes a fair equitable and feasible method of liquidation for all her creditors (both secured and unsecured) and of financial rehabilitation for Respondent, said plan being for the best interests of all of Respondent's creditors.

And Respondent further alleges that her said extension proposed or plan was and is the essence of honesty of purpose, freedom from intention to defraud, absence of design to take an unconscionable advantage of another and evidences such candor and frankness in recognizing obligations as reflects sincerity and willingness to perform them, so much so that her said extension proposal or plan presents with good faith.

VIII

Respondent denies that she has never been in possession of the properties described in the schedules attached to her petition filed herein and on the contrary alleges that she has been in uninterrupted actual or constructive possession of all of the entire share of the properties belonging to her since the year 1917 and up to this date.

And Respondent further alleges that there are certain valuable assets listed in her schedules filed herein of which she has had actual possession for quite some time past, which assets belong to her exclusively and which besides are a thing altogether apart from the assets involved in said Equity suit No. 2151 pending before this Court and hereinbefore referred to in further detail.

[fol. 189] Wherefore, Carlota Benitez Sampayo respectfully prays the Hon. Court to enter an order dismissing the

motion for dismissal to which this answer and opposition refers, with costs.

San Juan, P. R., December 9th, 1938.

(Sgd.) Carlota Benitez Sampayo. Geigel & Silva,
by Guillermo Silva, Attorneys for Bankrupt.

Duly sworn to by Carlota Benitez Sampayo. Jurat omitted in printing.

[fols. 190-224] Notified with copy of the foregoing on this 9th day of December, A. D. 1938.

Brown, Gonzalez & Newsom, by Walter L. Newsom,
Jr., Attorneys for the Bank of Nova Scotia.

[fol. 225] IN UNITED STATES DISTRICT COURT

OPINION—Filed January 3, 1939

This matter arises upon a motion of a creditor to dismiss the petition filed herein under Section 75 of the Bankruptcy Act. The schedules of the debtor describe as her property some 100 hens and a large number of pigeons with certain poultry raising equipment. She claims to be a farmer under the Act, engaged in the poultry business. But with respect to that business she is not insolvent. She claims it produces a profit of about \$50.00 per month and that she owes no debts and has incurred none with respect to such operations. These operations are carried on at her home in [fol. 226] Ponce. If this were all the facts in this case the petition would be dismissed without more.

But the said debtor claims to be a farmer as defined under the Act by virtue of her alleged operations of growing sugar cane, and processing it and cane grown by other into raw cane sugar and molasses.

José J. Benitez e Hijos, a contractual community of which the debtor is a member, owns several thousand acres of land located in Vieques, certain livestock, implements, and buildings. The land is devoted to production of sugar cane and to pasturage. The community also owned the capital stock of Benitez Sugar Company, which corporation owned a sugar mill railroad and rolling stock, land, livestock and other

properties. The properties of both since prior to 1917 have been operated as a single enterprise devoted to the production of raw cane sugar and molasses.

The debtor has never personally engaged in the operations of said properties and enterprise nor has she ever participated in the management thereof. She has furnished no money for such operations, has paid no taxes on the properties and enterprise, nor does she receive the principal part of her income from said properties.

Clearly, with respect to the operations of the sugar enterprise in Vieques, the debtor is not a farmer as defined in the Act.

[fol. 227] Even if she were a farmer with respect to the sugar enterprise, the properties of the Community Jose J. Benitez e Hijos and Benitez Sugar Company could not be administered by a Court of Bankruptcy upon the voluntary petition of the petitioning debtor.

As a member of the Community the debtor is the owner of a one-twelfth undivided interest in fee and a remainder after a life estate in a one-sixtieth undivided interest. Her brother, two sisters, the heirs of a deceased sister, and her father are the other members of the community. Although the community agreement expired in 1935, the affairs of the Community have not yet been wound up. The Community agreement is in essence a partnership agreement.

The Supreme Court of Puerto Rico, in a recent case with reference to this very community, has clearly explained the nature of the interest of a member thereof. That interest is limited to the share which may correspond to him upon liquidation of the community debts and affairs, and while a member's interest may be transferred, mortgaged and is subject to attachment, the grantee, mortgagee, or attaching creditor, is entitled only to what corresponds to the member upon liquidation of the debts and affairs of the community.

The undivided interest of the debtor is all that can be brought into the bankruptcy court upon her voluntary petition. Certainly it will not be contended that the bankruptcy [fol. 228] court may, upon such a voluntary petition, liquidate and wind up the affairs of the community.

The debtor, in her proposal for composition and her request for adjudication under sub-section (s), in effect asks the Bankruptcy Court to entertain partition proceedings, partition the properties of the Community and place the

debtor in possession of such specific property as may be partitioned to her. It is clearly not within the jurisdiction of the Bankruptcy Court to entertain such proceedings and Section 75 of the Act was never designed to permit such proceedings.

Furthermore, the properties of the Community are not susceptible of physical partition or, stating the matter another way, the only method of equitable division would be by sale and liquidation and division of the net proceeds.

It is interesting to note that this petitioning debtor opposed a partition suit brought by the custodian of her brother who had filed a petition for composition and extension under Section 74 of the Bankruptcy Act.

The fact that a judge of a federal court sitting in equity could protect the rights of all the parties as well as if he were sitting in bankruptcy could not effect the exclusive jurisdiction of the Bankruptcy Court on filing of a petition by a farm debtor under Section 75 of the Act. (See *Naylon v. Cartley*, 96 Fe. (2d) 761.)

[fol. 229] The Court cannot, however, but make reference to the equity proceedings pending with respect to the said sugar enterprise and its properties.

In consolidated equity cause 2151 a reorganization committee has been formed, a plan of reorganization filed, approved by the Court for submission and submitted to all the members of the Community and all the creditors and claimants, who have also been given the right to intervene or file their claims. A hearing on said plan has been set for January 9, 1939. All the properties are in the hands of the Receiver appointed in said case and are being administered and operated by him.

While the Court finds it unnecessary to here consider in detail the proposal for composition and extension submitted by the debtor prior to her request for adjudication under Section 75 (s) of the Act, it is impressed by the conspicuous absence in that proposal of any plan or method whereby the debtor is to finance the operations of the properties which she claims.

Taking into consideration all the facts and circumstances of this matter, the Court is compelled to conclude that the proceedings herein were initiated for the sole purpose of causing further undue delay in the said equity proceedings, and in order to harass the creditors and other members of

[fol. 230] the Community. The debtor has not proceeded herein with the good faith required by the Act.

Consequently, the petition filed herein and all proceedings had thereunder must be dismissed and an order to said effect will be entered.

San Juan, P. R., January 3rd, 1939.

(Sgd.) Robt. A. Cooper, Judge.

IN UNITED STATES DISTRICT COURT

Findings of Fact and Conclusions of Law—Filed January 3, 1939

Carlota Benitez Sampayo on October 13th, 1938 filed a petition as a farm-debtor under Section 75 of the Bankruptcy Act for composition and extension of her debts, in which she alleged that she was primarily bona fide personally engaged in producing products of the soil, the production of poultry and livestock and the production of poultry products in their unmanufactured state, and that the principal part of her income is derived from one or more of the foregoing operations as follows: production of sugar cane and the processing of same into sugar and molasses, production of cattle, poultry and sale of eggs. She also alleged that she was unable to pay her debts as they matured. Schedules were included. On the same date the petition was [fol. 231] approved by the Court as being properly filed and referred to the Conciliation Commissioner.

At the first meeting of creditors held November 12th, 1938, the debtor submitted a proposal for composition but failed to obtain acceptance from her alleged creditors.

On November 30th, 1938 she filed a petition for adjudication as a bankrupt under sub-section (s) of said Section 75 and another such petition on December 1st, 1938, and prayed that she be allowed to retain possession of or be placed in possession of her alleged properties as provided in the Act.

On December 1st, the Bank of Nova Scotia, as a creditor, filed a motion to dismiss the petition and all proceedings had thereunder on the grounds that (1) the debtor was not a farmer as defined in Section 75 of the Act; (2) that the petition was not filed in good faith; (3) that the Court is without jurisdiction; (4) that the proposal for composition

submitted is unfair, inequitable, contrary to law, impracticable and not submitted in good faith; and (5) that the debtor has never been in possession of the properties described in her schedules.

On December 12th, 1938 the debtor filed its answer and opposition to said Motion for Dismissal, and on December 27th, 1938 a hearing was had on the issues raised.

[fol. 232] Testimony was presented by The Bank of Nova Scotia and affidavits were filed by the debtor. Counsel stipulated that the records in Equity Cases 2151, 2349 and 2350 and 2322 now pending before this Court, and Bankruptcy Case No. 1258, as well as the record in the present case would be considered as evidence in this matter.

Upon consideration thereof the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

The debtor and her husband, Mr. J. Octabio Seix, reside in the city of Ponce, the latter being engaged in business and is president of The Pan-American Trading Company, a mercantile firm located in said City.

At their home in Ponce debtor has about 110 chickens and several hundred pigeons which produce eggs, friers and squabs which she sells. For approximately the last year and one-half she has had this poultry and has received a profit of about \$50.00 per month therefrom.

These operations are profitable, she owes no debts of any kind incurred with respect to said poultry business, and she carried on these operations personally.

[fol. 233] She receives, and has received from her husband, not less than \$200.00 per month.

II

The debtor is one of the members of a contractual Community of properties with the name Jose J. Benitez e Hijos and as such one of the co-owners of several thousand acres of land located in the Island of Vieques, livestock, farming implements and equipment and formerly all of the capital stock of a corporation The Benitez Sugar Company, which corporation is the owner of a sugar factory, railroad

and rolling stock, livestock and several hundred acres of land.

Her share in said Community amounts to a one-twelfth undivided interest in fee and a remainder after a life estate of a one-sixtieth undivided interest. She acquired her said interest by inheritance from her mother, who died in 1917. Since that date all of the said properties have been operated as one single enterprise and devoted to the production of raw cane sugar and molasses therefrom and from sugar cane grown by independent farmers financed by said corporation and the transportation and marketing of said sugar and molasses. The term of the Community contract expired July 30th, 1935, but the affairs of the Community have not been liquidated.

The Community contract is essentially a partnership agreement.

[fol. 234]

III

The debtor has never intervened in the operation of the said properties nor the sugar enterprise to which devoted, nor has she ever participated in the management thereof.

She has never been in actual possession of said properties or any of them.

From and including the year 1933 she has received no income from said properties or sugar enterprise except for the sum of \$3,000 which was paid to her in 1933 or 1934 for the execution of a deed of extension of the Community and approximately \$20,000 which she received in 1937 as a share of benefit payments paid by the Agricultural Adjustment Administration with respect to the 1935 sugar crop, and pursuant to an agreement of division of said benefit payments entered into with the other members of the Community, The Benitez Sugar Company and The Bank of Nova Scotia.

She has never furnished any money for the properties and sugar enterprise, has never paid any taxes on said properties, nor did she invest any of the monies received in said properties or sugar enterprise.

IV

The other members of said Community are the debtor's brother Jose de Jesus Benitez Sampayo, and her two sisters

Arcadia and Josefa Benitez Sampayo, each having an equal [fol. 235] undivided interest, Gabriel Ferrer Otero and Gabriel Ferrer Benitez, husband and son of a deceased sister of the debtor, who acquired an equal undivided interest by inheritance from said decedent, and the debtor's father Jose J. Benitez Diaz, who is the owner of a one-half undivided interest in fee and a life estate in a one-twelfth undivided interest.

V

The Bank of Nova Scotia has financed the said properties and enterprise since prior to 1927 by annual crop loans and other loans secured by first mortgages and chattel mortgages on said properties and a pledge of the capital stock of Benitez Sugar Company and other securities.

In July 1933, the said Bank entered into possession of said properties and operated them until they were taken over by the Receiver appointed by this Court in Equity case No. 2151 on October 20th, 1936. Said Receiver has operated them since said date and is now in possession of and operating them.

VI

Said Equity suit No. 2151 was initiated by said Bank to foreclose on the pledges of first mortgage notes or bonds, chattel mortgages and stock pledges or assigned to it in guaranty, and to realize on a refractionary or crop lien. [fol. 236] The Court allowed other creditors to intervene or file their claim in said suit and upon petition granted said Bank permission to file foreclosure proceedings on the mortgages it held as pledgee in the nature of ancillary suits. The Bank has filed equity suits 2349 and 2350 for foreclosure of mortgages on the realty and the receivership has been extended to them and the three suits consolidated as consolidated cause No. 2151.

A decree was entered in favor of said Bank on its bill of complaint and supplemental bill in equity case No. 2151, and on October 13th, 1938 the Master sold the pledged securities at public auction, said Bank having bought them in at said sale. The Master's sale was confirmed by order of this Court entered October 24th, 1938, and said mortgages, chattel mortgages, shares of stock and other securities have been conveyed to said Bank.

A reorganization committee was formed and has submitted a proposed plan of reorganization which has been approved by the Court for submission and it has been transmitted to all creditors, claimants and members of said Community. A hearing on said plan is set for January 9th, 1939.

VII

Jose de Jesus Benitez Sampayo, one of the members of said Community, on November 9th, 1937 filed a petition for [fol. 237] composition and extension under Section 74 of the Bankruptcy Act, and the Court on several occasions has refused to stay proceedings in Equity Case No. 2151 upon petition of said debtor and his custodian.

The said Jose de Jesus Benitez Sampayo, by his custodian, on April 12th, 1938 filed Equity suit No. 2322 against the other members of the said Community for partition of its said properties, but upon motion of Carlota Benitez Sampayo, the petitioning debtor herein, to dismiss for alleged lack of jurisdiction filed June 7th, 1938, the said suit has been held in abeyance.

VIII

The Debtor herein has no debts other than those which may possibly arise by virtue of her secondary liability as a member of said contractual community.

CONCLUSIONS OF LAW

I

The Debtor is not a farmer, as defined in Section 75 of the Bankruptcy Act, with respect to the properties and sugar enterprise of the Community Jose J. Benitez e Hijos and the Benitez Sugar Company.

II

If the debtor be a farmer, as defined in the Act, with respect to her poultry business, she is not insolvent or unable to pay her debts with respect thereto as they mature.

[fol. 238]

III

The debtor by her individual petition cannot bring the properties of the said Community nor the Benitez Sugar Company under the Administration of the Bankruptcy Court.

IV

This Court as a bankruptcy court is without jurisdiction to entertain the debtor's petition filed herein.

V

The petition of the debtor was not filed in good faith and the debtor has not proceeded herein in good faith.

VI

The petition filed herein and all proceedings had herein should be dismissed with costs to the petitioning debtor.

San Juan, Puerto Rico, January 3rd, 1939.

(Sgd.) Robt. A. Cooper, Judge.

IN UNITED STATES DISTRICT COURT

DECREE OF DISMISSAL—Filed January 3, 1939

This cause came on at this term for hearing on a motion to dismiss filed by the Bank of Nova Scotia, and the petitioning debtor's answer and opposition thereto, and trial [fols. 239-265] was had thereon December 27th, 1938.

Now upon the testimony and documentary evidence produced at said hearing, and the Findings of Fact and Conclusions of Law made and entered herein on this date and hereby incorporated as a part of this decree, it is hereby

Ordered, Adjudged and Decreed That the petition filed herein and all proceedings had thereunder be and the same hereby are dismissed, with costs to the petitioning debtor.

January 3rd, 1939.

Robt. A. Cooper, Judge.

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[fol. 266] IN UNITED STATES DISTRICT COURT

Cause #1435

In the Matter of CARLOTA BENITEZ SAMPAYO, Debtor
(Farmer), (Ponce)

Cash Received and Disbursed

	Rec.	Dis.
1938		
Oct. 13—C. B. Sampayo.	\$10	
Dec. 31—Treas. of U. S. Dept. 12/31/38		\$10
1939		
Jan. 9—Geigel & Silva	\$5	

Under Section 75 of Bankruptcy Act

Conciliation Commissioner Enrique Igaravidez

DOCKET ENTRIES

1938

October 13. Petition under Section 75 of Bankruptcy Act filed in duplicate at 9:03 A. M. with schedules attached.

October 13. Order approving petition and referring case to E. Igaravidez, Conciliation Commissioner filed and entered. Att. copy to Igaravidez and one petition and schedules.

November 29. Petition of Bank of Nova Scotia for continuance, etc. filed.

November 30. Petition of debtor for adjudication under subsection S Bankruptcy Act filed.

[fol. 267] November 30. Petition of debtor for appraisal filed.

November 30. Order entered referring petition filed Nov. 29 to Conciliation Commissioner for Report and setting hearing for Dec. 9, 1938. Attested copies to Geigel & Silva, Brown and Con. Commissioner.

November 30. Order Re: Report of Conciliation Commissioner and setting hearing for December 9, 1938 filed and entered.

December 1. Motion for dismissal.

December 8. Motion for subpoena filed.

December 9. Hearing continued to December 12, 1938.

December 10. Motion requesting Felipe F. Vidal to furnish Court with information, etc. filed.

December 12. Motion to strike petition of Bank of Nova Scotia filed.

December 12. Answer and opposition of Debtor to petition of Bank of Nova Scotia, filed.

December 12. Answer and opposition of debtor to motion to dismiss filed.

December 12. Motion to strike motion of December 13, 1938 filed.

[fol. 268] December 12. Hearing on motion to dismiss etc. had, etc. and continued to December 20, 1938.

December 12. Hearing on motion for continuance of proceedings in Equity 2151 had, motion to strike denied, etc. matter held in Abeyance.

December 16. Hearing on motion to dismiss continued to December 19, 1938.

December 19. Hearing on motion of December 10 regarding information had motion denied.

December 19. Hearing on motion to dismiss continued to December 27, 1938.

December 22. Exception of debtor to Special Report of Conciliation Commissioner filed.

December 22. Petition for subpoena duces tecum filed—approved. Subpoena duces tecum and one copy issued.

December 27. Subpoena duces tecum returned and filed, executed.

December 27. Petition to quash service of subpoena filed.

December 27. Hearing on motion to dismiss and opposition had motion to quash service of subpoena heard and overruled. Court announced that order dismissing case would be signed on ground that debtor was not a farmer. Order to be prepared.

[fol. 269] December 27. Identifications 1 to 6 filed—refused. (Affidavits of Antonio Farinacci, Julio Usera, Erasto Arjona Siaca, Reinaldo Rivera, Francisco S. Subirá and Jose T. Díaz.) *

December 27. Petition requesting adjudication filed.

1939

January 3. Finding of fact and Conclusion of Law filed and ent-red. Copies to Attorneys.

January 3. Opinion filed and ent-red. Copies to Attorneys.

January 3. Decree of dismissal filed and entered. Copy to attorneys.

January 9. Exception of Debtor to order of dismissal filed.

January 9. Notice of appeal filed at 11:00 A. M.

January 9. Petition and order of appeal and fixing bond at \$300 filed. Order entered.

January 9. Assignment of errors filed.

January 9. Cost bond on appeal filed, (\$300) order entered approving.

January 9. Citation on appeal and one copy issued to Marshal. Citation returned.

[fol. 270] January 19. Praeipe filed.

January 19. Statement of evidence filed.

January 20. Notice of settlement of statement of evidence filed.

January 30. Hearing Re: Settlement of statement of Evidence continued to February 3, 1939.

February 3. Proposed Amendments of Bank of Nova Scotia to Statement of Evidence filed.

February 3. Appellee Praeipe for Record, filed.

February 3. Hearing Re: Settlement of Statement of Evidence continued until February 8, 1939.

February 8. Hearing Re: Settlement of Statement of evidence continued until February 10, 1939.

February 9. Objection of Debtor Carlota Benitez Sampayo to proposed amendments, to Statement of Evidence filed by Bank of Nova Scotia, filed.

February 10. Settlement of Statement of Evidence called. Upon request of Mr. Silva, Atty. Debtor he is allowed 5 days to file amended Statement of Evidence.

[fol. 271] March 7. Motion and order extending time to April 7 to file Statement of Evidence, filed. Order entered.

March 23. Motion to withdraw as counsel of Carlota B. Sampayo filed order.

March 31. Order entered granting motion for withdrawal, order to be prepared. Copy to Seix.

April 10. Amended Statement of Evidence filed in compliance with order of the Court filed.

April 10. Submission of Statement of Evidence filed.

April 10. Attested copy journal entry of March 31, 1939 issued to Seix.

April 13. Order allowing Geigel & Silva to withdraw as

atty. for debtor filed and entered. Attested copy to Carlota Benitez Sampayo.

April 17. Objections to appellant's praecipe filed.

April 17. Petition for enlargement of time filed (of debtor to file record).

April 18. Motion for extension of ten days to file amendment to Statement of Evidence filed, Approved.

April 21. Order enlarging time to file record on Appeal 60 days from April 17, 1939, filed and entered. Exception noted by appellee.

[fol. 272] April 21. Hearing on objections of appellant to counter-praecipe of appellee continued.

April 21. Attested copy of Order this date and Journal entry sent to Carlota Benitez Sampayo.

April 28. Proposed Amendments to amended Statement of Evidence filed.

May 12. Hearing on Amended Statement of Evidence and proposed amendments thereto had and the matter taken under advisement.

May 12. Hearing on the objections of Debtor-appellant to counter-praecipe of Appellee continued until further order.

June 2. Order re: Statement of Evidence filed and entered. Copies to Debtor and Brown.

June 2. Statement of Evidence filed.

June 16. Order re: Statement of Evidence filed and entered. Attested copy to Carlota Benitez Sampayo.

June 22. Statement of Evidence filed June 2, 1939 was amended and re filed June 22.

June 28. Order re: Statement of Evidence filed, attested copy issued to Carlota Benitez Sampayo.

June 30. Exception of Debtor-Appellant to Order of June 28, 1939, filed.

June 30. Attested copy of Order of Circuit Court of Appeals to proceed in Forma Pauperis, filed.

[fol. 273] IN UNITED STATES DISTRICT COURT

MEMORANDUM

Petition for appeal filed January 9, 1939.

Order allowing appeal filed and entered on January 9, 1939.

Cost bond on appeal in the amount of \$300.00 filed January 9, 1939; Carlota Benitez Sampayo, Principal, Maryland Casualty Company, surety.

Citation on appeal issued January 9, 1939; service acknowledged on January 9, 1939.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed January 9, 1939

Now Comes Carlota Benitez Sampayo, Debtor in the above entitled proceedings and complainant and, in connection with her petition for allowance of appeal herein, says that in the record of the proceedings and in the final decree made and entered in the above entitled matter manifest errors were committed to the prejudice of said Debtor, to wit:

First. The Court erred in failing to strike from the record and in due course, the pleading filed herein by The Bank of Nova Scotia entitled "Petition of The Bank of Nova Scotia" and which resulted in the decree complained of as prayed for in the Motion to strike filed by Debtor herein and submitted to the Court on December 9, 1938.

Second. The Court erred in failing to strike from the record and in due course the pleading filed herein by The Bank of Nova Scotia entitled "Motion for Dismissal" and which resulted in the decree complained of as prayed for in [fol. 274] the Motion to strike filed by Debtor herein and submitted to the Court on December 9, 1938.

Third. The Court erred in refusing to adjudge Debtor herein a bankrupt promptly, pursuant to the provisions of Section 75 (s) of the Bankruptcy Act since her original petition under Section 75 (a) to (r) had been approved as properly filed under said Section and Debtor herein had complied with all the provisions of the law and the rules for the case made and provided.

Fourth. The Court erred in entering its order of November 21, 1938 vacating in its most fundamental aspects the order of the Conciliation Commissioner dated November 12, 1938 directing the Receiver in Equity Suit No. 2151 in which The Bank of Nova Scotia is plaintiff and Debtor

herein one of the defendants to file a report pursuant to the provisions of Section 69 (d) of the Bankruptcy Act because said order, besides being contrary to law, prevented Debtor herein from asserting her rights under said Section and, in particular, from placing in the record of this case conclusive information definitely establishing that Debtor herein is a farmer as defined in Section 75 (r). *v/l*

Fifth. The Court erred in entering its order of November 30, 1938 requiring the Conciliation Commissioner to render a report pursuant to the provisions of Section 75 (o) of the Bankruptcy Act and maintaining said order in full force and effect up to the time of the hearing because said order, besides being contrary to law, led Debtor herein into believing that a summary and not a plenary hearing would be held in connection with the proceedings had herein and [fol. 275] which resulted in the decree complained of.

Sixth. The Court erred in failing to find that the order of Subpoena duces tecum issued to Debtor herein to appear as witness for said The Bank of Nova Scotia in the course of the hearing which resulted in the Decree complained of was null and void, contrary to law and should be quashed, for the following reasons:

(a) Because at the time of the service of the citation, neither the marshal effecting the service, nor anybody else tendered to Debtor herein the fees to cover traveling expenses from her residence in the city of Ponce, to the city of San Juan and one day's attendance at the place of examination, as required by law.

(b) Because said The Bank of Nova Scotia was not a party to these proceedings when said order was entered and the citation issued, said Bank having never filed a proof of claim in these proceedings, nor appeared before the Hon. Conciliation Commissioner while Debtor was proceeding under Section 75 (a) to (r) said The Bank of Nova Scotia appearing as debtor and not as creditor in the schedules filed by Debtor herein, exclusive of a claim for \$50,000.00 previously filed by Debtor in Equity suit No. 2350 against said Bank and which had been omitted from Debtor's schedules through inadvertence.

(c) Because said order of subpoena duces tecum called for the production of all of Debtor's books, records and

[fol. 276] papers referring to and hearing upon Debtor's poultry business and her farming operations extending over a period in excess of five years, without describing the exact records and papers to be produced, said procedure being an abuse of the process of this Court, not contemplated or permitted under the law and employed for the purpose of harassing Debtor herein and preventing her from preparing for the hearing to be held and which resulted in the decree complained of.

(d) Because the hearing to which said order of service referred were null and void, initiated in violation of the law.

(e) Because the proceedings to which said order referred were proceedings initiated by motion or petition, which fall within the category of summary proceedings, this Court not having seasonably entered an order converting said summary proceedings into a plenary action or hearing so that Debtor herein was deprived from an opportunity to marshal or subpoena her witnesses and to obtain and offer such evidence as may be offered in plenary proceedings but which could not be offered in proceedings of the nature of the ones involved.

Seventh. The Court erred in permitting The Bank of Nova Scotia to offer evidence as in a plenary hearing on the basis of granting Debtor herein reasonable time within which to prepare and submit her evidence and then refusing to grant such additional time to Debtor herein.

[fol. 277] Eighth. The Court erred in failing to find that the petition and motion filed by The Bank of Nova Scotia herein, which resulted in the decree complained of, were tantamount to an opposition to the adjudication of Debtor herein on her voluntary amended petition filed under Section 75 (s) of the Bankruptcy Act, such opposition not being contemplated or permitted under the law.

Ninth. The Court erred in failing to find that said The Bank of Nova Scotia is estopped from alleging that Debtor herein is not a farmer because of it having previously alleged and proved in Equity suit No. 2151 before this Court in which said Bank is plaintiff and Debtor herein is one of the defendants, all the facts tending to establish that Debtor herein is a farmer, as defined in Section 75 (r) of the Bankruptcy Act.

Tenth. The Court erred in failing to find that the allegations made by The Bank of Nova Scotia to the effect that Debtor herein is not a farmer are not sufficient to join issue on that jurisdictional question, in view of the fact that Debtor herein filed her original petition in the above entitled proceedings verified under oath and that said petition was promptly approved by the Hon. Martin Travieso, then Acting Judge of this Court, while neither the petition, nor the "Motion for Dismissal" filed by said Bank and which resulted in the Decree of Dismissal complained of were verified under oath.

Eleventh. The Court erred in failing to find that both the petition and the "Motion for Dismissal filed herein by The [fol. 278] Bank of Nova Scotia and which resulted in the Decree of Dismissal complained of, not having been verified under oath, same could not be passed upon and decided, it being that such lack of verification contravenes the express provisions of Section 18 (c) of the Bankruptcy Act.

Twelfth. The Court erred in failing to find that the issues raised by the petition and by the said "Motion for Dismissal" which resulted in the Decree of Dismissal complained of, not appearing from the records of the above entitled proceedings, may not be raised by petition or motion, said procedure being altogether inadequate and improper, as alleged in independent defense No. 13 set up to the said petition and independent defense No. 3 set up to the "Motion for Dismissal".

Thirteenth. The Court erred in failing to find that Debtor herein is a farmer irrespective of her agricultural enterprise in the island of Vieques, Puerto Rico, since she is and has been engaged for quite some time prior to the filing of her petition herein in the production of poultry and of poultry products in their unmanufactured state and on a business or commercial scale in the Ponce District.

Fourteenth. The Court erred in failing to find that even though the nature of Debtor's agricultural enterprise in the island of Vieques, Puerto Rico should not permit her for the time being to apply for and obtain the relief, provided for farmers under Section 75 of the Bankruptcy Act, Debtor's qualifications as a farmer originating from the production of Poultry and poultry products *products* in

[fol. 279] their unmanufactured state on a business of commercial basis in the Ponce District and her inability to pay her debts as they mature nevertheless entitle Debtor herein to apply for and receive such relief and to have all of her property and property rights subjected exclusively to and administered under the provisions of said Section.

Fifteenth. The Court erred in failing to find that since Debtor herein filed her petition in the above entitled proceedings on October 13, 1938 at 9:05 o'clock A. M. and the public sale held in execution of the pledge or securities pursuant to the decree made and entered in said Equity suit No. 2151 before this Court was effected after said event had occurred, said sale, as well as the order of this Court dated October 24, 1938 confirmed same and the order of this Court dated November 3, 1938 approving the deed of conveyance executed pursuant to said order of confirmation are nugatory and of no legal consequence, in view of the automatic and self-executing stay provided by subsections (o) and (p) of Section 75 of The Bankruptcy Act and particularly in view of the fact that both The Bank of Nova Scotia, complainant in said Equity case No. 2151 and the Special Master appointed to effect said sale had due notice of such filing prior to the time when said sale was effected.

Sixteenth. The Court erred in failing to find that the sale, the order of confirmation and the deed referred to in detail in assignment Fifteenth hereinabove were and are nugatory and of no legal consequence, in view of the fact [fol. 280] that Debtor herein having seasonably and properly raised that issue in paragraph III of her answer and opposition filed to the pleading entitled "Petition of the Bank of Nova Scotia", in the form of a cross-bill or counter-claim and prayed for relief towards that end and said The Bank of Nova Scotia having failed to file a replication or reply to said cross-bill or counter-claim, said allegations were admitted, entitling Debtor herein to the relief prayed for in that respect.

Seventeenth. The Court erred in finding that The Bank of Nova Scotia was a party to these proceedings because of the stay provided by Section 75 (o) authorized it to file its petition entitled "Petition of the Bank of Nova Scotia" praying for the relief provided by said Section 75 (o), when Debtor herein was already proceeding under 75 (s) and

then eliminating said petition and limiting the hearing to the jurisdictional issue as to whether Debtor was or is a farmer raised in the other pleading filed and entitled "Motion for Dismissal", in which latter pleading no issue whatsoever was raised as to the vacation of the stay, because through the elimination of said "Petition of the Bank of Nova Scotia" praying for vacation of the stay, the Court eliminated the only ground on which said Bank might have qualified as a party in interest to these proceedings.

Eighteenth. The Court erred in failing to find that said The Bank of Nova Scotia having made no defenses to Debtor's petition under Section 75 of the merits, while Debtor was proceeding under subdivisions (a) to (r) of [fol. 281] said Section and said Bank having failed to furnish any excusable explanations for failure to interpose said defenses in the regular course and within the time fixed by the Bankruptcy Act, said Bank, even though it were a party in interest to these proceedings, would be guilty of the relief prayed for and which resulted in the order or decree complained of.

Nineteenth. The Court erred in failing to find that there having been a general reference of Debtor's petition to the Conciliation Commissioner for the District since October 13, 1938, the issue of lack of good faith, if at all, should have been seasonably raised before the Conciliation Commissioner within the time fixed by the Bankruptcy Act and not belatedly before the Court and after Debtor herein was proceeding under Section 75 (s).

Twentieth. The Court erred in failing to find that the issues raised by the petition and "Motion for Dismissal" filed by said The Bank of Nova Scotia and which resulted in the order or decree complained of, if at all, should have been raised by answer and opposition praying for vacation of the adjudication, once that event should have occurred and not extemporaneously by motion to dismiss since the latter pleading is treated as a demurrer under the old rules and may not be resorted to for the purpose of raising or trying questions of fact dehors the record.

[fol. 282] Twenty-first. The Court erred in failing to find that Debtor herein having already filed on November 3, 1938 her amended petition praying to be adjudged a bankrupt under Section 75 (s) of the Bankruptcy Act and also

her petition for appraisal as provided by said Section 75 (s) and the question of feasibility of the extension proposal of plan submitted by Debtor herein not having been seasonably raised before the Conciliation Commissioner to whom the proceedings herein had been referred, while Debtor herein was proceeding under sub-sections (a) to (r) of said Section, the issue being for the first time raised "In Bankruptcy", said issue, if at all, could only be raised and tried after said appraisal should have been completed and the Conciliation Commissioner should have rendered a report to the Hon. Judge of this Court based on said Appraisal, as to whether such three year rehabilitation was possible.

Twenty-second. The Court erred in failing to find that the record of this case as well as the record of Equity suit No. 2151 also before this Court, in which latter case said The Bank of Nova Scotia is plaintiff and Debtor herein one of the defendants, definitely and conclusively establishes the status of Debtor herein as a farmer as regards her interest in the agricultural enterprise in the island of Vieques, P. R.

Twenty-third. The Court erred in failing to find that a general reference of these proceedings having been made to [fol. 283] the Conciliation Commissioner, the proceedings as to the issues pertaining to feasibility and lack of good faith, if at all, should have been had before the Conciliation Commissioner or Referee, as required by General Order XII, it being that said proceedings are not included amongst those required by the Act to be had before the Judge.

Twenty-fourth. The Court erred in failing to find that Debtor herein is also a farmer because of the fact that her principal income is derived from one or more of the farming operations listed in Section 75 (r) of the Bankruptcy Act.

Twenty-fifth. The Court erred in failing to find that no evidence to the contrary having been submitted on the issue of good faith as to the initiation of the proceedings herein in the course of the hearing which resulted in the order or decree complained of, or at any other time, the allegations pertaining to said issue incorporated in Debtor's answers and oppositions to the petition and to the "Motion for Dismissal" filed herein by The Bank of Nova Scotia, coupled

with the nature of the offer made by Debtor to her creditors through her extension proposal or plan submitted herein constitute a definite proof of Debtor's good faith.

Twenty-sixth. The Court erred in failing to find that through the filing of the verified petition herein by Debtor alleging to be a farmer and manifesting a desire to effect [fol. 284] a composition or extension of time to pay her debts and the approval of her said petition by the Judge of this Court, a presumption of bona fides of the filing of the petition was raised which was not overcome by the evidence submitted in the course of the hearing which resulted in the order or decree complained of.

Twenty-seventh. The Court erred in rejecting affidavit No. 6086 subscribed and sworn to by Erasto Arjona Siaca, Esq. in this city of Ponce, P. R. on December 24, 1938 before Notary Public Carlos J. Teissonniere, offered in evidence and marked "rejected evidence", which affidavit establishes that Debtor herein is a farmer; that Debtor's principal income is derived from one or more of the farming operations listed in Section 75 (r) of the Bankruptcy Act; that Debtor herein proceeded in absolute good faith in filing her petition herein; that Debtor herein initiated partition proceedings as to her interest in the agricultural properties and enterprise in the island of Vieques, P. R. since the year 1936, which proceedings could not be continued because of the filing of Equity suit No. 2151 by The Bank of Nova Scotia and the prohibitions included in the order appointing the receiver made and entered in said suit and that due to the difficulties and complications which have been created to Debtor herein, the filing of her petition under Section 75 of the Bankruptcy Act was the only means [fol. 285] left at Debtor's disposal to pay all her creditors in full and at the same time promote her financial rehabilitation, because the petition and motion filed herein by said The Bank of Nova Scotia - *du which* resulted in the order or decree complained of having been originally set for hearing on motion day of this Court and said hearing continued at the request of counsel for said Bank and both pleading-being of such nature as are disposed of in summary hearing, Debtor herein was entitled to present her evidence through affidavits, particularly so in view of the fact that Debtor's attorneys were not informed that the summary proceedings would be converted into a plenary hearing in

time for them to prepare the evidence to be submitted in the form and manner provided for the submission of evidence in a plenary hearing or to bring the witnesses residing at distant places to testify in open Court.

Twenty-eighth. The Court erred in rejecting affidavit No. 1548 subscribed and sworn to by Julio Usera in the city of Ponce, P. R. on December 24th, 1938 before Notary Public, Arjona Siaca, which affidavit was offered in evidence and marked "rejected evidence" and established that Debtor herein is a farmer as defined in Section 75 (r) of The Bankruptcy Act, because the petition and motion filed herein by the Bank of Nova Scotia and which resulted in the order or decree complained of having been originally set for hearing on motion day of this Court and said hearing continued [fol. 286] at the request of counsel for said Bank and both pleadings being of such nature as are disposed of in summary hearings, Debtor herein was entitled to present her evidence through affidavits, particularly, so in view of the fact that Debtor's attorneys were not informed that the summary proceedings would be converted into a plenary hearing in time for them to prepare the evidence to be submitted in the form and manner provided for a plenary hearing nor to bring the witnesses residing at distant places to testify in open Court.

Twenty-ninth. The Court erred in rejecting affidavit No. 1545 subscribed and sworn to by Reinaldo Rivera in the city of Ponce, P. R. on December 24th, 1938 before Notary Public E. Arjona Siaca, which affidavit was offered in evidence and marked "rejected evidence" and establishes that Debtor herein is a farmer as defined in Section 75 (r) of the Bankruptcy Act, because the petition and motion filed herein by The Bank of Nova Scotia and which resulted in the order or decree complained of having been originally set for hearing on motion day of this Court and said hearing continued at the request of counsel for said Bank and both pleadings being of such nature as are disposed of in summary hearings, Debtor herein was entitled to present her evidence through affidavits, particularly so, in view of the fact that Debtor's attorneys were not informed that the summary proceedings would be converted into a plenary hearing in time for them to prepare the evidence to be submitted in the form and manner provided for a plenary

[fol. 287] hearing nor to bring the witnesses residing at distant places to testify in open Court.

Thirtieth. The Court erred in rejecting affidavit No. 1547 subscribed and sworn to by Antonio Farinacci in the city of Ponce, P. R. on December 24, 1938 before Notary Public E. Arjona Siaca which affidavit was offered in evidence and marked "rejected evidence" and establishes that Debtor herein is a farmer as defined in Section 75 (r) of the Bankruptcy Act, because the petition and motion filed herein by the Bank of Nova Scotia and which resulted in the order or decree complained of having been originally set for hearing on motion day of this Court and said hearing continued at the request of counsel for said Bank and both pleadings being of such nature as are disposed of in summary hearings, Debtor herein was entitled to present her evidence through affidavits, particularly so, in view of the fact that Debtor's attorneys were not informed that the summary proceedings would be converted into a plenary hearing in time for them to prepare the evidence to be submitted in the form and manner provided for a plenary hearing nor to bring the witnesses residing at distant places to testify in open Court.

Thirty-first. The Court erred in rejecting affidavit No. 1549 subscribed and sworn to by Jose T. Diaz in the city of Ponce, P. R. on December 24th, 1938 before Notary Public E. Arjona Siaca, which affidavit was offered in evidence and marked "rejected evidence" and establishes that Debtor herein is a farmer pursuant to the provisions of Section 75 (r) of the Bankruptcy Act, because the petition [fol. 288] and motion filed herein by The Bank of Nova Scotia and which resulted in the order or decree complained of having been originally set for hearing on motion day of this Court and said hearing continued at the request of counsel for said Bank and both pleadings being of such nature as are disposed of in summary hearings, Debtor herein was entitled to present her evidence through affidavits, particularly so, in view of the fact that Debtor's attorneys were not informed that the summary proceedings would be converted into a plenary hearing in time for them to prepare the evidence to be submitted in the form and manner provided for a plenary hearing nor to bring the witnesses residing at distant places to testify in open Court.

Thirty-second. The Court erred in rejecting the affidavit subscribed and sworn to by Francisco G. Subirá and which was offered in evidence and marked "rejected evidence" and establishes that Debtor herein is a farmer pursuant to the provisions of Section 75 of the Bankruptcy Act and that the petition filed in the above entitled proceedings by Debtor herein prior to the time set for the sale of certain securities in which Debtor herein has a substantial interest pursuant to the decree made and entered in said Equity Suit No. 2151 and that both the attorney for The Bank of Nova Scotia and the Special Master had actual notice of such filing prior to the consummation of said sale, as [fol. 289] alleged by Debtor herein in the cross-bill or counter-claim incorporated in paragraph III of her answer to the "Petition of The Bank of Nova Scotia" filed herein because the petition and motion filed herein by The Bank of Nova Scotia and which resulted in the order or decree complained of having been originally set for hearing on motion day of this Court and said hearing continued at the request of counsel for said Bank and both pleadings being of such nature as are disposed of in summary hearings, Debtor herein was entitled to present her evidence through affidavits, particularly so, in view of the fact that Debtor's attorneys were not informed that the summary proceedings would be converted into a plenary hearing in time for them to prepare the evidence to be submitted in the form and manner provided for a plenary hearing nor to bring the witnesses residing at distant places to testify in open Court.

Thirty-third. The Court erred in failing to find that Debtor herein is a farmer pursuant to the provisions of Section 78 (r) of the Bankruptcy Act because her two answers and oppositions filed herein were verified under oath and on personal knowledge as regards said issue and The Bank of Nova Scotia did not overcome their probative force by witnesses or by one witness with corroborating circumstances as required by law.

Thirty-fourth. The Court erred in failing to find that Debtor herein filed her petition under Section 75 of the Bankruptcy Act in good faith because her two answers and oppositions filed herein were verified under oath and on [fol. 290] personal knowledge as regards said issue and The Bank of Nova Scotia did not overcome their probative

force by witnesses or by one witness with corroborating circumstances as required by law.

Thirty-fifth. The Court erred in failing to find that the extension proposal or plan submitted by Debtor herein in these proceedings was feasible because her two answers and oppositions filed herein were verified under oath and on personal knowledge as regards said issue and the Bank of Nova Scotia did not overcome their probative force by witnesses or by one witness with corroborating circumstances, as required by law.

Thirty-sixth. The Court erred in failing to find that in praying for the vacation of the automatic and self-executing stay provided by subsections (o) and (p) of Section 75 through it pleading entitled "Petition of The Bank of Nova Scotia" which was previously filed and set for hearing by this Court jointly with the pleading filed subsequently by said Bank, entitled "Motion for Dismissal", said Bank waived the issue as to jurisdiction, feasibility and good faith in the filing of the petition herein, because said elements of jurisdiction, feasibility and good faith are necessary and indispensable in order to create such automatic and self-executing stay.

Thirty-seventh. The Court erred in entering an order in open Court at the time of the hearing which resulted in the order or decree complained of to the effect that the Clerk would enter an order dismissing the petition for lack of [fol. 291] jurisdiction and then permitting the attorneys for said The Bank of Nova Scotia to draw a "Decree of Dismissal" including other grounds eliminated in the course of said hearing which was limited exclusively to the jurisdictional question as to whether Debtor herein was or was not a farmer by order of this Court, thereby preventing Debtor herein from offering evidence as to the other issues not tried and incorporated in said decree.

Thirty-eighth. The Court erred in permitting counsel for the Bank of Nova Scotia to draw the Decree of Dismissal and the Opinion and Findings of Fact and Conclusions of Law made pursuant thereto and not having copy of the draft of said Decree of Dismissal thus prepared served upon the undersigned attorneys, giving them reasonable time to file such objections as to them might have seemed pertinent and proper before same was signed and entered

as of record, as required by law and the rules for the case made and provided, and in particular, by Rule 38 of this Court, then and now in full force and effect.

Thirty-ninth. The Court erred in entering an Opinion with questions of law and fact intermingled pursuant to the Decree of Dismissal made and entered herein, because such Opinion is not contemplated or permitted by the law and the rules for the case made and provided and, in particular, by Supreme Court Equity Rule 70½ adopted by this Court quite some time ago and now and then in full force and effect.

[fol. 292] Fortieth. The Court erred in finding in its said "Opinion that the Supreme Court of Puerto Rico in a recent case pertaining to this very community or "comunidad" has clearly explained the nature of the interest of a member thereof, without citing the case referred to (which is the case of Carle Dubois vs. Jose J. Benitez Diaz) and in applying the principles of said case to the present one, it being that the particular case referred to was initiated several years ago when the contractual "comunidad" was still in force and has no bearing on the present situation when such contractual "Comunidad" no longer exists.

Forty-first. The Court erred in finding in its said "Opinion" that Debtor herein in her proposal for composition and her request for adjudication under subsection (s) in effect asks the Bankruptcy Court to entertain partition proceedings because Debtor herein has filed no proposal for composition in these proceedings and no such request was incorporated in Debtor's amended petition under said sub-section (s) which amended petition simply prayed for adjudication pursuant to the provisions of Section 75 (s) and for such other and further relief to which Debtor herein might be entitled.

Forty-second. The Court erred in finding in its said "Opinion that the properties of the said Community or "Comunidad" are not susceptible of physical partition because such finding besides being immaterial, irrelevant [fol. 293] and not pertinent to the issue as to whether Debtor herein is or is not a farmer to which the hearing which resulted in the order or decree of dismissal complained of was limited, is contrary to law, and in particular,

to the provisions of the Civil Code of Puerto Rico pertaining to the subject of "Comunidades".

Forty-third. The Court erred in finding in its "Opinion" that a hearing on the plan of reorganization submitted in Equity suit No. 2151, has been set for January 9, 1939 because such finding, besides being immaterial, irrelevant and not pertinent to the issue as to whether Debtor herein is or is not a farmer, to which issue this Court limited the hearing which resulted in the order or Decree of Dismissal complained of, gives the impression that such hearing may be legally held and said plan approved when such is not the case, amongst others, for the following reasons:

(a) Because Debtor herein having filed her petition under Section 75 of the Bankruptcy Act and said petition having been approved by the Hon. Judge of this Court and Debtor having served notice in open court at the termination of the hearing which resulted in the order or Decree of Dismissal complained of to the effect that she intended to appeal from the order which this Hon. Court stated would be entered by the Clerk, dismissing the petition herein, praying at the same time that an order be made touching the security to be furnished by her, no action as regards the share of the properties belong to Debtor herein in the [fol. 294] agricultural enterprise in Vieques may be taken until a final decision shall have been rendered in connection with her appeal.

(b) Because J. Octavio Seix, one of the defendants in said Equity suit No. 2151, Consolidated Cause, has filed and answer and opposition and continues to oppose said plan of reorganization alleging that it is unequitable and unfair and not feasible and said plan being predicated upon a decree of foreclosure being entered by consent of all the parties to said Equity suit, it is absolutely impossible to carry said plan into execution as long as one of the defendants in said Equity suit No. 2151, Consolidated Cause, shall refuse to accept same.

(c) Because the jurisdiction of this Court to pass upon and consider said plan of reorganization originating from an order entered by this Court in said Equity suit No. 2151 on January 14, 1938, as alleged and Debtor herein having in the meantime appealed from said particular order in

conjunction with the appeal filed and allowed to her from the final decree made and entered in said Equity suit No. 2151, the power of this Court to proceed further with the case has been suspended, so that this Court is without jurisdiction to consider and enter a decision pursuant to said plan of reorganization.

(d) Because Debtor herein having given notice in open Court of her intention to appeal from the order made and entered in the above entitled proceedings dismissing her [fol. 295] petition under Section 75 of the Bankruptcy Act, as soon as said order should be filed at the office of the Clerk of this Court and Debtor herein being entitled to a supersedeas as of course for a period of ten days following the date on which the decree was made and entered at the office of the Clerk, that is, up to January 13, 1939, no order approving said plan of reorganization may be entered before that time and, in the meantime, Debtor herein will have perfected her appeal herein, pursuant to the provisions of Section 24 of the Bankruptcy Act and then no further proceedings may be entertained as regards her share in the properties and assets covered by said plan of reorganization until a final decision shall have been rendered pursuant to her said appeal.

(e) Because said plan is based upon Complainant in said Equity suit No. 2151, Consolidated Cause, proceeding to foreclose the mortgages to which ancillary suits No. 2349 and 2350 refer and service on defendant co-proprietor Gabriel Ferrer Otero in said Consolidated Suit having been obtained by publication and said Gabriel Ferrer Otero having never appeared in said suit or subjected himself to the jurisdiction of this Hon. Court, the decree against him made and entered on August 22, 1938 and any other decree which may be entered against him in purely conditional for for one year from entry, preventing any disposition of the properties and assets belonging to said defendant and involved in said suit, within that time.

[fol. 296] Forty-fourth. The Court erred in finding in its said "Opinion" that the only method of equitable division of the properties of the agricultural enterprise in Vieques in which Debtor herein has an interest would be by sale and liquidation and division of the net proceeds because such findings besides being irrelevant, immaterial and not per-

inent to the issue as to whether Debtor herein is or is not a farmer (to which issue the hearing which resulted in the order or decree complained of was limited) and also immaterial as regards the provisions of Section 75 of the Bankruptcy Act, is besides contrary to law and, in particular, to the provisions of the Civil Code of Puerto Rico pertaining to the subject of "Comunidades".

Forty-fifth. The Court erred in finding in its "Opinion" that in the extension proposal submitted by Debtor herein no plan or method appears whereby Debtor herein is to finance the operation of the properties which she claims because said finding, besides being immaterial, irrelevant and not pertinent to the issue as to whether Debtor herein is or is not a farmer (to which single issue the hearing which resulted in the order or decree of dismissal complained of was limited by the Court) is contrary to the facts appearing from the record of this case and the evidence submitted in the course of said hearing.

Forty-sixth. The Court erred in finding in its "Opinion" that the proceedings here were initiated for the sole purpose of causing further undue delay in the said equity proceedings and in order to harass the creditors and other members of the Community or "Comunidad" and that Debtor herein has not proceeded herein with the good faith required by the Act because said finding, besides being immaterial, irrelevant and not pertinent to the issue as to whether Debtor herein is or is not a farmer, (to which single issue the hearing which resulted in the order or decree complained of was limited by the Court) is not supported by any of the records submitted in evidence through the stipulations of counsel hereinbefore referred to or by any other evidence submitted in the course of said hearing.

Forty-seventh. The Court erred in referring in paragraph two on page one of the Findings of Fact and Conclusions of Law to Debtor's "alleged" creditors, since the record of the proceedings herein and the record of said Equity suit No. 2151 definitely show that Debtor herein does have certain creditors, including judgment creditors having judgment liens on Debtor's properties and assets.

Forty-eighth. The Court erred in stating on pages one and two of the Findings of Fact and Conclusions of Law

that Debtor herein filed a petition for adjudication as a bankrupt under subject (5) of said Section 75 and another such petition on December 1st, 1938, because Debtor herein filed only two petitions around that time, both of which two [fol.298] petitions were simultaneously filed on November 30th, 1938, one of said petitions being an amended petition praying that Debtor herein be adjudged a bankrupt pursuant to the provisions of Section 75 (s) of the Bankruptcy Act and the other a petition praying that all her property be appraised; that her unencumbered exemptions or unencumbered interest or equity in her exemptions be set aside to her and that she be allowed to retain possession or be placed in possession of all the remainder of her property, wherever located.

Forty-ninth. The Court erred in failing to find that prior to December 1st, 1938 said The Bank of Nova Scotia had filed another petition herein entitled "Petition of The Bank of Nova Scotia" praying for the vacation of the stay of proceedings and that said petition together with the pleading filed by said Bank and designated "Motion for Dismissal" were set for hearing simultaneously on motion day of this Court and the hearing continued at the request of said The Bank of Nova Scotia for a later date.

Fiftieth. The Court erred in failing to find that although the pleading filed by said The Bank of Nova Scotia entitled "Motion for Dismissal" raised various issues, at the time of the hearing which resulted in the order or decree complained of, the Court limited the issue exclusively to the jurisdictional question as to whether Debtor herein was or was not a farmer, pursuant to the provisions of Section 75 (r) of the Bankruptcy Act.

[fol.299] Fifty-first. The Court erred in finding that Debtor herein filed her answer and opposition to said "Motion for Dismissal" on December 12th, 1938 because such answer and opposition was filed on December 9th, 1938 in the course of the hearing had on motion day of this Court on that date.

Fifty-second. The Court erred in finding that all the records of Equity Cases Nos, 2151, 2349, 2350 and 2322 now pending before this Court and of Bankruptcy Case No. 1258, as well as the record in the present case would be considered as evidence in this matter pursuant to stipulation

of counsel because said stipulation was limited exclusively to such portions of said records as would be pertinent to the issue of issues to be passed upon by the Court.

Fifty-third. The Court erred in finding that Debtor's husband J. Octavio Seix is President of Pan-American Trading Company because no evidence was offered in that respect in the course of the hearing which resulted in the order or decree of dismissal complained of.

Fifty-fourth. The Court erred in finding that Debtor herein received from her husband not less than \$200.00 per month because the testimony of Debtor in that respect was that her husband delivered to her the approximate sum of \$200.00 per month with which to pay servants, etc. meaning moneys given to her for the expenses of the home, there having been no other evidence offered in that respect.

[fol. 300] Fifty-fifth. The Court erred in finding that a contractual community exists since the evidence offered in the course of the hearing which resulted in the Decree of Dismissal complained of does not justify such finding but, on the contrary, is uniform in establishing that no such contractual "comunidad" has existed since prior to the time of the appointment of the Receiver in said Equity suit No. 2151 on October 20th, 1936.

Fifty-sixth. The Court erred in failing to find that in addition to Debtor's original interest of one-twelfth in fee and one sixtieth in remainder in the agricultural enterprise in Vieques, Debtor herein is also entitled to a liquidation and adjudication for profits and other emoluments accruing to her since the year 1917, which allegation was incorporated in her verified answer and opposition to the petition and the "Motion for Dismissal" hereinbefore referred to, the probative force of said allegation made in an answer under oath and verified on personal knowledge not having been overcome by witnesses or by one witness with corroborating circumstances, as required by law.

Fifty-seventh. The Court erred in finding that the community contract (which in fact does not exist) is essentially a partnership agreement because of the Court having previously decided in the decree made and entered in said Equity suit No. 2151 that the form of organization that existed while such contract was in force prior to August

1st, 1935 was "comunidad" or joint proprietorship as [fol. 301] defined by the Civil Code of Puerto Rico.

Fifty-eighth. The Court erred in finding that Debtor herein never intervened in the operation of the properties or sugar enterprise in Vieques and that Debtor herein has never participated in the management thereof, since the evidence submitted at the time of the hearing which resulted in the order or decree of dismissal complained of definitely establishes that Debtor herein has operated her share in said properties and sugar enterprise since the year 1917 through an agent or manager in a manner which did not cause the operation and management to cease to be her own.

Fifty-ninth. The Court erred in finding that Debtor herein has never been in actual possession of her share in said properties and in said sugar enterprise because such finding, besides being immaterial, irrelevant and not pertinent to these proceedings, is contrary to the evidence submitted at the time of the hearing which resulted in the order or decree of dismissal complained of.

Sixtieth. The Court erred in finding that since the year 1933 Debtor herein has received no income from her share in said properties or sugar enterprise excepting the \$3000.00 received by Debtor in the year 1933 or 1934 and the \$20,000.00 which she received in the year 1937 from benefit payments paid by the Agricultural Adjustment Administration because it is not the question of receipts but the questions of earned income that must be taken into consideration in determining the total income received by Debtor herein [fol. 302] from her agricultural operations.

Sixty-first. The Court erred in finding that Debtor herein received said sum of \$20,000.00 pursuant to an agreement of division of said benefit payments entered into between Debtor herein and the other members or co-proprietors of the community or "comunidad", Benitez Sugar Company and The Bank of Nova Scotia because no evidence whatsoever was offered in that respect at the time of the hearing which resulted in the order or decree complained of, but on the contrary, when said alleged agreement was offered in evidence, same was rejected by the Court, to which ruling no exception whatsoever was taken.

Sixty-second. The Court erred in finding that Debtor herein has never furnished any money for the properties

and sugar enterprise hereinbefore referred to and that Debtor has never paid any taxes on said properties because said finding is contrary to the evidence submitted in the course of the hearing which resulted in the order or decree of dismissal complained of.

Sixty-third. The Court erred in finding that said The Bank of Nova Scotia has financed said properties and sugar enterprise since prior to the year 1927 by annual crop loans and other loans and not the individual co-proprietors because said finding is contrary to the evidence submitted at the time of the hearing which resulted in the order or decree of dismissal-complained of.

[fol. 303] Sixty-fourth. The Court erred in finding that in July 1933 said The Bank of Nova Scotia entered into possession of the properties in which Debtor herein has an interest and operated them until they were taken over by the Receiver appointed by this Court in Equity Case No. 2151, without finding further that such possession was entered into under an agreement with Debtor herein and the other co-proprietors in what is tantamount to a contract of antichresis and not by way of ownership or in any other respect.

Sixty-fifth. The Court erred in finding that Jose de Jesus Benitez Sampayo, one of the members or co-proprietors of said community or "Comunidad" filed a petition for composition or extension under Section 74 of the Bankruptcy Act and that the Court on several occasions has refused to stay proceedings in Equity Case No. 2151 upon petition of said Debtor or his Custodian, because said finding besides being immaterial, irrelevant and not pertinent to the issue of this case, fails to take into consideration that said Section 74 does not provide the automatic and self-executing stay provided by subsection (n) of Section 75.

Sixty-sixth. The Court erred in finding that upon motion of Debtor herein, the suit for partition filed by Jose de Jesus Benitez Sampayo was held in abeyance because such finding is contrary to the evidence submitted at the time of the hearing which resulted in the order or decree of dismissal complained of.

[fol. 304] Sixty-seventh. The Court erred in finding that Debtor herein has no debts other than those which may

possibly arise by virtue of her secondary liability as a member of said contractual community or "comunidad" because the evidence offered in the course of the hearing which resulted in the order or decree complained of is contrary to such finding.

Sixty-eighth. The Court erred in holding that Debtor herein is not a farmer as defined in Section 75 of the Bankruptcy Act, with respect to her share in the properties and sugar enterprise hereinbefore referred to because such conclusion of law besides being immaterial, irrelevant and impertinent to the issues of this case is contrary to the evidence produced at the time of the hearing which resulted in the order or decree of dismissal complained of.

Sixty-ninth. The Court erred in holding that if Debtor herein be a farmer as defined in said Act with respect to her poultry business, she is not insolvent or unable to pay her debts with respect thereto, as they mature, because said conclusion of law besides being immaterial, irrelevant and impertinent to the issues of this case is contrary to the evidence produced at the time of the hearing which resulted in the order or decree of dismissal complained of.

Seventieth. The Court erred in holding that Debtor herein by her individual petition cannot bring the properties [fol. 305] of said community or "comunidad" nor of the Benitez Sugar Company under the administration of the Bankruptcy Court because said conclusion of law is irrelevant, immaterial and not pertinent to the issue presented by this case which refers exclusively to Debtor's interest in the properties and business of the agricultural enterprise in Vieques in addition to her other properties and assets and liabilities and her poultry business which have no connection whatsoever with said agricultural enterprise in Vieques.

Seventy-first. The Court erred in holding that as a Bankruptcy Court it is without jurisdiction to entertain Debtor's petition filed herein because such conclusion of law is contrary to law and to the evidence produced in the course of the hearing which resulted in the order or decree of dismissal complained of.

Seventy-second. The Court erred in holding that the petition of Debtor herein was not filed in good faith and that

Debtor herein has not proceeded in good faith because said conclusion of law besides being immaterial, irrelevant and not pertinent to the issue as to whether Debtor herein is a farmer or not, to which issue the hearing which resulted in the decree of dismissal complained of was limited by order of this Court, is contrary to law and not supported by the records of the various cases offered in evidence at the time of the hearing herein and hereinbefore referred to.

Seventy-third. The Court erred in holding that Debtor herein must pay the costs of the proceedings herein, after [fol. 306] having entered an order in the course of the hearing which resulted in the order or decree complained of to the effect that said hearing would be limited exclusively to the decision of the jurisdictional question as to whether Debtor herein was or was not a farmer pursuant to the provisions of the Bankruptcy Act because said conclusion of law is contrary to law in that when a petition is dismissed exclusively on jurisdictional grounds, the court may not decree Costs.

Seventy-fourth. The Court erred in entering its decree of dismissal dismissing the petition filed herein by Debtor and all the proceedings had thereunder with costs to Debtor herein, because said decree is contrary to law and to the evidence produced in the course of the hearing which resulted in the said decree of dismissal.

Seventy-fifth. The Court erred in overruling objections by Debtor's counsel to questions propounded by the counsel for The Bank of Nova Scotia thereby admitting improper and prejudicial testimony:

"Q. What is your husband's occupation, Mrs. Seix?"

"Mr. Silva: I object to that, your Honor.

"The Court: I think it might be relevant. Proceed.

"A. Well, he is a business man. I don't know.

[fol. 307] Q. I mean what particular business has he been engaged in the past year?

A. I know nothing of his business.

Q. Do you know how much his annual income is?

A. I don't know. I get what I want. That's all.

Q. And how much do you receive from him a year?

Mr. Silva: May I object again, your Honor. I don't see the relevancy of that question.

The Court: I think that is relevant.

Mr. Silva: I take an exception, your Honor.

A. Well, I couldn't exactly tell you. I know that whenever I need money, I get it.

Q. Could you tell us approximately how much?

The Court: One hundred dollars a month, two hundred dollars a month?

A. When he has money I spend whatever I want, and when he hasn't I spend as little as possible. I couldn't tell you.

Q. You must be able to give some idea. Think, Mrs. Seix.

The Court: Do you get a substantial amount of money?

[fols. 308-454] A. Do you include everything, house, service, everything?

The Court: Everything.

A. It is over \$200.00 a month, or more, maybe.

Wherefore, Debtor in the above entitled proceedings prays that for the errors aforesaid, the order or decree of dismissal entered by the District Court of the United States for the District of Puerto Rico be reversed with costs.

San Juan, P. R. January 7th, 1938.

Geigel & Silva, by Guillermo Silva, Attorneys for
Carlota Benitez Sampayo. Office & P. O. Address:
The Chase National Bank Building and P. O. Box
1359, San Juan, P. R.

[fol. 455] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS

On June 16, 1939, upon petition, leave was granted appellant to proceed in forma pauperis.

Thereafter, to wit, on August 2, 1939, upon motion of appellant, leave was granted to file typewritten copies of transcript of record.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MINUTE ENTRY OF HEARING

On October 18, 1939, this cause came on to be heard by the court, the Honorable Scott Wilson and Honorable Calvert

Magruder, Circuit Judges, and Honorable Hugh D. McLellan, District Judge, sitting; appellant submitting on brief by leave of court.

[fol. 456] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FIRST CIRCUIT, OCTOBER TERM, 1939

No. 3488

CARLOTA BENITEZ SAMPAYO, Defendant, Appellant,

v.

THE BANK OF NOVA SCOTIA, Complainant, Appellee

No. 3486

SAME v. SAME

No. 3487

SAME v. SAME

Appeals from the District Court of the United States for
Puerto Rico

Before Wilson, Magruder and McLellan, JJ.

OPINION OF THE COURT—Filed January 10, 1940

MAGRUDER, J.:

These cases are related and will be dealt with in a single opinion.

No. 3488

Complainant, appellee, on October 20, 1936, filed in the District Court of the United States for Puerto Rico a bill in equity against Benitez Sugar Company, a corporation, and various persons, including the present appellant, individually and as members of the "Comunidad" Jose J. Benitez e Hijos, seeking foreclosure of certain securities [fol. 457] and of a crop lien in satisfaction of various joint and several obligations of the corporation and the Comunidad.

This Comunidad had large holdings of land on the Island of Vieques, Puerto Rico, used for growing sugar cane and

for pasturage. It also owned cattle, buidings, agricultural equipment, and held the capital stock of the Benitez Sugar Company, one of the defendants. The latter corporation owned a sugar factory, agricultural land, a large number of live stock, equipment, buildings, etc., all on the Island of Vieques, and devoted to the growing of sugar cane and the manufacture of raw sugar and molasses. The operations of the Comunidad and the Benitez Sugar Company had for many years been conducted "as a single and integrated enterprise". The Comunidad had been constituted by contract between the widower and the heirs of Carlota Sampayo Guzman in 1917, and by successive renewals extended to July 30, 1935. On July 1, 1933, the Bank of Nova Scotia, under the terms of a crop loan agreement with the Comunidad, took possession of the properties and operated them for the account of the Comunidad and the Sugar Company, applying the net proceeds to the repayment of the crop loans. When the contract regulating the Comunidad expired on July 30, 1935, no partition or liquidation of the business was had, but the Bank continued the operation of the business as theretofore, until a receiver took over.

Upon the filing of the bill for foreclosure a receiver was appointed ex parte, and his appointment was subsequently confirmed after hearing. The receiver took possession of said properties and operated the enterprise under orders of the court. A final decree was rendered on August 22, 1938, in favor of complainant bank. The decree adjudged that the Comunidad and the Sugar Company were jointly and severally indebted to the bank in the principal sum of \$673,569.82 with interest; that the members of the Comunidad were individually liable in proportion to their respective participations therein, that of the present appellant being a one-twelfth interest; that defendant members of the Comunidad, in proportion to their respective liabilities, and the defendant Benitez Sugar Company, must on or before [fol. 458] September 1, 1938, pay to the bank the said sum with interest, in default of which a special master was directed to sell at public auction the yarious pledged and mortgaged properties. Provision was made for an eventual deficiency judgment.

On November 17, 1938, appellant, being intent upen appealing from the decree, filed in the office of the Clerk of the District Court a so-called "petition for severance" which

recited that a "notice of severance" dated October 7, 1938, had theretofore been served on the other parties, and which requested the court to enter an order providing as follows:

"(a) Setting a day certain (not later than November 22nd, 1938) on which she may present to the Hon. Robert A. Cooper, Judge of this Court, her amended Notice of hearing on her Petition for Severance in the above entitled cause, together with proof of service thereof, and her Petition for Leave to Appeal.

"(b) That upon presentation of said amended notice, with proof of service thereof to the Hon. Robert A. Cooper, Judge of this Court, together with the Petition for Leave to Appeal and the Assignment of Errors, this Hon. Court enter an order severing the record and permitting your petitioner to prosecute her appeal without joining her co-parties."

An "amended notice of hearing on petition for severance", dated November 17, 1938, which was served on the other parties, read in part as follows:

"Please take notice that on November 23rd; 1938 the petition of Carlota Benitez Sampayo for severance of the record of the above entitled cause, together with her petition for leave to appeal from each and every one of the orders or decrees made or entered in the course of these proceedings and up to this date and, in particular, from the final decree entered herein on August 22, 1938 and other acts done and orders entered pursuant to said final decree, will be presented to the Hon. Robert A. Cooper, Judge of the District Court of the United States for the District of Puerto Rico."

This "petition for severance" came on for hearing on November 23, 1938, and was denied. A formal order of severance was evidently considered by the District Court not to be necessary to the perfecting of the appeal (see *United States v. King and Howe, Inc.*, 78 F. (2d) 693, 695 [fol. 459] (C. C. A. 2d, 1935)), for on the same day the court issued an order granting appellant's petition for leave to appeal and citation was served on appellee. On February 24, 1939, this order was, upon the motion of the appellee, vacated by the District Court on the ground that it had been improvidently granted the statutory three-months' period for appeal having expired. 28 U. S. C. § 230.

Appellant now appeals from this order of February 24, 1939, vacating the earlier order allowing the appeal. We believe that this vacating order is a "final decision" within the meaning of 28 U. S. C. § 225, and hence appealable to this court. If allowed to stand, it would finally dispose of the controversy. It would leave the decree of August 22, 1938, in effect and immune from attack by appeal, because the lapse of the three-months' period would preclude a new application, either to the District Court or to a judge of this court, for leave to appeal. The situation is therefore distinguishable from cases where an order is entered vacating a decree pro confesso and permitting the defendant to file an answer. *O'Brien v. Lashar*, 266 Fed. 215 (C. C. A. 2d, 1920); *Board of Supervisors v. Knickerbocker Ice Co.*, 80 F. (2d) 248 (C. C. A. 2d, 1935); *Beighle v. LeRoy*, 94 F. (2d) 30 (C. C. A. 3d, 1938). It is also distinguishable from orders refusing in the first instance to allow an appeal. Such orders are not reviewable as "final decisions" because they do not put an end to the controversy; the denial is not res adjudicata as to the right to appeal and an application can still be made to another judge. 28 U. S. C. § 228.

In her opposition to the motion to vacate, the order of November 23, 1938, allowing the appeal, appellant "admits that on November 23, 1938 she filed and presented to the Hon. Judge of this Court a Petition for Appeal from said final decree together with her assignment of errors and prayer for reversal and that on said date this Court entered the order allowing her appeal filed herein, as a matter of right, as provided by law." This application was made one day after the lapse of the statutory period. *Walters v. Baltimore & Ohio Railroad Co.*, 76 F. (2d) 599 (C. C. A. 3d, 1935); [fol. 460] *Northwestern Public Service Co. v. Pfeifer*, 36 F. (2d) 5, 7 (C. C. A. 8th, 1929). As was said in *Muckelroy v. Baldwin*, 70 F. (2d) 728, 729 (C. C. A. 8th 1934), "the three months' statutory period for appeal is mandatory and jurisdictional and, being such, it cannot be extended by waiver, consent, or even order of court." Accord, *Robie v. Hart, Schaffner & Marx*, 40 F. (2d) 871 (C. C. A. 8th, 1930); *Vaughan v. American Insurance Co.*, 15 F. (2d) 526, 527 (C. C. A. 5th, 1926); *Sprague v. Chicago B. & Q. Railroad*, 17 F. (2d) 768 (C. C. A. 8th, 1927). See *Alaska Packers Ass'n v. Pillsbury*, 301 U. S. 174 (1937).

Appellant refers to what we said in *Baez v. People of Puerto Rico*, 82 F. (2d) 317, 321 (1936): "An appeal is a

matter of right. It is the date of presentation of the application to the court or judge that fixes the right of the applicant to his appeal, not the date of its allowance." This is true; if application is seasonably made to the judge, the appeal will not be defeated because the judge delayed in acting on it, a circumstance beyond the control of the party appealing. *Cardona v. Quinones*, 240 U. S. 83 (1916); *J. D. Randall Co. v. Fogelsong Mach. Co.*, 200 Fed. 741 (C. C. A. 6th, 1912). But, as noted above, in the present case the application was not made until after the expiration of the three-months' period.

It is contended that the so-called "petition for severance" may be considered an application for leave to appeal. But this petition was not so regarded by appellant, who on November 23, 1938, filed a separate application for leave to appeal. The "petition for severance" gave notice of an intention to apply for leave to appeal. This, however, is not equivalent to an application. *Osborn v. United States*, 59 F. (2d) 712, 714 (C. C. A. 4th, 1931). *Robie v. Hart, Schaffner & Marx*, supra, page 872; *Vaughan v. American Insurance Co.*, supra, page 527; *United States v. New National Coal Co.*, 72 F. (2d) 168 (C. C. A. 7th, 1934), where the court said: "Merely declaring that he will appeal does not of itself amount to taking an appeal."

Furthermore, the "petition for severance" itself was not presented to the court until November 23, 1938. Even if we considered this petition as in effect an application for appeal, the filing of it with the clerk of the court on November 17 did not fulfill the statutory requirement. As this court said in *Baez v. People of Puerto Rico*, 82 F. (2d) 317 (1936) at 321:

"The filing of an application for appeal in the office of the clerk of the court where the judgment or decree is entered will not be regarded as an application 'duly made' under section 230, so as to stop the running of the statute, unless it be where the sole judge of that court or all of its judges are out of the jurisdiction, or incapacitated, so that an application cannot be made to a judge of that court within the three months period. Where the sole judge or all the judges of the court in which the judgment or decree is entered are out of the jurisdiction, or incapacitated, the filing of the application for appeal in the office of the clerk within three months from the entry of judgment or decree will not be permitted to defeat the right of the appellant."

To the same effect, see *United States v. New National Coal Co.*, supra, at page 168, where the court said, "The filing of the petition for appeal avails nothing unless within the statutory time allowed for taking the appeal it is brought to the attention of the judge for action thereon." See also *Green v. City of Lynn*, 87 Fed. 839 (C. C. A. 1st, 1898); *Camden Iron Works v. City of Cincinnati*, 241 Fed. 846 (C. C. A. 6th, 1917); *Ross v. White*, 32 F. (2d) 750, 752 (C. C. A. 6th, 1929).

A further point remains. On October 13, 1938, appellant filed in the District Court a farmer-debtor's petition for composition or extension under Section 75 of the National Bankruptcy Act, 11 U. S. C. § 203; on the same day the court approved the petition as properly filed under said Section and referred the same to a Conciliation Commissioner. Appellant contends that the pendency of this petition in the bankruptcy court operated to toll the three-months' period for appeal from the equity decree of August 22, 1938. We find no warrant in any provision of the Bankruptcy Act for this contention. Section 75 (o) (11 U. S. C. § 203 (o)) provides that certain enumerated proceedings "against the farmer or his property" shall not be maintained in any court while the petition under Section 75 (a) to (r) is pending. [fol. 462] *Kalb v. Feuerstein*, U. S. Supreme Court, Jan. 2, 1940. But this in no wise forbids an appeal by the farmer from an adverse equity decree entered prior to the filing of the petition in the bankruptcy court; and such appeal would have to be taken within the three-months' period provided in 28 U. S. C. § 230.

The order of November 23, 1938, allowing the appeal having been improvidently entered, the district court had power to vacate it. *United States v. Nordbye*, 75 F. (2d) 744 (C. C. A. 8th, 1935); *Farmers' Loan & Trust Co. v. McClure*, 78 Fed. 211 (C. C. A. 8th, 1897); *Mackenzie v. Pease*, 146 Fed. 743 (C. C. A. 7th, 1906). Even if the District Court had not vacated the order, we should still have been obliged to take note of our lack of jurisdiction and dismiss the appeal from the decree of August 22, 1938. *Walters v. Baltimore & Ohio Railroad Co.*, 76 F. (2d) 599 (C. C. A. 3d, 1935).

The order appealed from must be affirmed.

No. 3486

This is the original abortive appeal from the decree of August 22, 1938. Appellee moves to docket the case and

dismiss the appeal under Section 3 of our Rule 16 for failure of appellant to file the transcript of record. The appeal must be dismissed on the more fundamental ground just stated in No. 3488, namely that application for appeal was not made within the statutory period.

No. 3487

This is an appeal from an order of the District Court of the United States for Puerto Rico dismissing appellant's petition under Section 75 of the Bankruptcy Act.

After the entry of the equity decree mentioned in No. 3488, above, appellant on October 13, 1938, one hour before the foreclosure sale pursuant to said decree, filed in the District Court her petition as a farmer-debtor for composition or extension under Section 75 of the National Bankruptcy Act. 11 U. S. C. § 203. She did this in the belief that the pendency of this petition would operate under Section 75 (o) and (p) automatically to stay all further proceedings in the equity case and would, under Section 75(n), draw into the exclusive jurisdiction of the bankruptcy court all the real and personal property of the Comunidad, or at least her undivided fractional interest in this specific property. In addition to her interest in the farming operations of the Comunidad, appellant based her claim to be a "farmer" on the fact that at her home in the City of Ponce, P. R., where she lives with her husband, she has for several years engaged in a small way in raising and selling poultry and eggs, from which she derives a profit of about \$50 a month.

The debtor's schedule of debts, filed with her petition, listed her pro rata liability for all the debts of the "integrated enterprise"—the Comunidad and Beritez Sugar Company; also a debt of \$500 to her personal attorneys in this litigation, and a trivial debt on account of the poultry business. The schedule of the debtor's property listed all the specific real and personal property of the Comunidad and the Sugar Company, in which she claimed a one-twelfth interest. There was also listed an unspecified sum alleged to be owing the debtor by the "integrated enterprise", the amount of which could only be determined upon an accounting. In addition, petitioner listed certain personal property wholly owned by her—household effects, \$1,850, chickens and pigeons, together with lofts, poultry houses, supplies, etc., \$1,199.

The petition was presented *ex parte*, and on the same day the acting judge of the bankruptcy court issued an order approving it as properly filed under Section 75 (General Orders in Bankruptcy, L, par. 2), and referred the same to a Conciliation Commissioner. In due course, the debtor filed her inventory and proposal for extension.

Having failed to obtain from creditors the requisite assents to her proposal for extension, the debtor on November 30, 1938, amended her petition and asked to be adjudged a bankrupt under Section 75(s). The debtor further asked that her property be appraised, her exemptions set aside, and "that she be allowed to retain possession or be placed in possession of all of the remainder of her property" un-[fol. 464] der the conditions provided in said subsection (s).

On December 1, 1938, the Bank of Nova Scotia as a creditor filed a motion to dismiss the petition under Section 75 on the grounds that the petitioner was not a "farmer"; that the petition was not filed in good faith but for the purpose of interfering with the pending equity proceedings; and that the proposal for extension was impracticable and was not presented in good faith.

The debtor objects that Section 75 contains no provision for such a motion to dismiss. This is true but not important. The pro forma order of the court, on the day the petition was filed, approving the same as having been properly filed under Section 75, does not preclude the court at a later stage of the proceedings from taking note of a possible lack of jurisdiction, on its own motion, even without a motion by an interested party. See *Davis v. Shackleford*, 91 F. (2d) 148 (C. C. A. 8th, 1937). The District Court held a hearing on the jurisdictional issues, after due notice to the debtor. On January 3, 1939, the court rendered an opinion, filed findings of fact and conclusions of law, and decreed that the petition of the debtor be dismissed with costs. Appeal was duly taken from this decree.

The amended petition under Section 75(s) of the Bankruptcy Act could not properly be dismissed, upon the facts here appearing, on the ground of lack of good faith on the debtor's part. This is settled by the decision of the Supreme Court in *John Hancock Mutual Life Insurance Co. v. Bartels*, decided December 4, 1939. We must therefore consider whether the debtor is a "farmer" within the meaning of Section 75.

An initial difficulty is to determine the applicable defini-

tion of "farmer" for purposes of Section 75 of the Bankruptcy Act. Originally the term "farmer" was not defined or used in the Act, but Section 4(b) forbade the involuntary adjudication of "a wage earner or a person engaged chiefly in farming or the tillage of the soil". 30 Stat. 544; 47 Stat. 47. On March 3, 1933, the Act was amended by adding Sections 73-77. 47 Stat. 1467. Section 74 dealt with compositions or extensions in the case of "any person excepting a corporation". Section 74(l) did not use the term "farmer" but provided that "No order of liquidation or adjudication shall be entered in any proceeding under this section instituted by or against a wage earner or a person engaged chiefly in farming or the tillage of the soil unless the wage earner or a person engaged chiefly in farming or the tillage of the soil consents." 47 Stat. 1469. Section 75 dealt specially with agricultural compositions or extensions. Subsection (c) of that section provided for the filing of a petition by a "farmer". Subsection (r) provided (47 Stat. 1473):

"For the purpose of this section and section 74, the term 'farmer' means any individual who is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such farming operations occur."

This definition was not made applicable to Section 4(b) above quoted. The first Frazier-Lemke Act, 48 Stat. 1289, added subsection (s), but made no change in the definition. The Act of May 15, 1935, 49 Stat. 246, took pains to establish a consistent definition of "farmer" throughout the Bankruptcy Act. Section 4(b) was amended to say "except a wage earner or a farmer". Section 74 (l) was amended to read "a wage earner or a farmer". Section 75(r) was amended to read:

"For the purposes of this section, section 4(b), and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured

state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

The second Frazier-Lemke Act enacted a new subsection (s) of Section 75 but made no change in the definition of [fol. 466] "farmer", which stood until the passage of the Chandler Act, 52 Stat. 840.

For the first time, by the Chandler Act, a definition of "farmer" was inserted in Chapter 1, Section 1 of the Bankruptcy Act, entitled "Definitions". Section 1(17) of the Bankruptcy Act, as thus amended, now reads as follows:

"Section 1. Meaning of Words and Phrases.—The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

"(17) 'Farmer' shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations;"

Section 75 is part of "this Act", that is, the Bankruptcy Act. Subsections (c) and (s) of Section 75 speak of the filing of a petition, and an amended petition, by a "farmer". There is nothing in the context of these subsections inconsistent with applying to the word "farmer" the new definition in Section 1(17). Section 75(r) contains the old definition of "farmer"; but this definition cannot be considered part of the "context" of the other subsections in which the word "farmer" is used. If it were so considered, it must equally be considered part of the "context" of Section 4(b) in which "farmer" appears, because by the express provision of Section 75(r) the definition of "farmer" there given was to apply to Sections 4(b) and 74 as well as to Section 75.

It is clear that the new definition of "farmer" in Section 1(17) was intended to apply to Section 4(b). The Report of the House Committee on the Judiciary¹ says:

¹ H. Rep. No. 1409, 75th Cong., 1st Sess. (Committee on Judiciary, July 29, 1937), p. 6.

“‘Farmer’.—New clause (17): The amendment of May 5 [15], 1935 (11 U. S. C. Ann., sec. 203), extends the meaning of the term ‘farmer’ to include dairy farmers and persons engaged in the production of poultry or livestock or [fol. 467] its products in their unmanufactured state, whose principal income is derived from any one or more of these corporations. Correspondingly, section 4 of the act is amended by substituting the phrase ‘a farmer’ for the language ‘a person engaged chiefly in farming or the tillage of the soil.’ (See 11 U. S. C. Ann., sec. 22.) Pursuant to this purpose of Congress to expand the meaning of the term, it would seem advisable to formulate a new definition and to include it in section 1 as clause (17).”

We find no intimation in this language of an intention on the part of Congress to reintroduce the awkward situation of having “farmer” mean one thing in Section 4(b) and something else in Section 75, a situation which Congress had carefully eliminated by the Act of May 15, 1935, *supra*. The Chandler Act in applying the new definition of “farmer” to Section 4(b) necessarily amends Section 75(r) which reads, “For the purpose of this section, section 4(b) and section 74, the term ‘farmer’ includes” etc. Section 4(b) is now governed by the general definition in Section 1(17), and there is no longer any Section 74, which has been transposed to a later part of the Act, old Section 74 (1) referred to above now appearing as Section 379. 52 Stat. 913. The 1938 edition of the United States Code (11 U. S. C. § 203(r)) includes old Section 75(r) as though it had been unaffected by the Chandler Act. But the codification is only presumptive evidence of the laws (1 U. S. C. § 54(a)); and we are persuaded from a review of the legislative history that the Chandler Act amendment of Section 1(17) by implication repeals Section 75(r), so far as the old definition of “farmer” is inconsistent with the new. See Section 4 of the Chandler Act, 52 Stat. 940, containing the cautionary provisions that “* * * all Acts or parts of Acts inconsistent with any provisions of the amendatory Act are hereby repealed.”²

² The Report of the House Committee on the Judiciary, referred to in footnote 1, *supra*, contains an addendum indicating the changes in existing law made by the Chandler bill as it then read. At p. 144 of this Report there is this statement: “Sec. 75. Agricultural Compositions and Exten-

[fol. 468] We take it, therefore, that the applicable definition is found in the new Section 1 (17): "'Farmer' shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations". Does the debtor in the case at bar fit within this definition? The phrase "an individual personally engaged in farming" is not a "term of art". "In every case the totality of the facts is to be considered and appraised." *First National Bank v. Beach*, 301 U. S. 435, 439 (1937). We think the District Court was right in concluding that the debtor was not "personally engaged" in the farming operations of the Comunidad on Vicques Island. She was a party to the community contract which designated her father as general manager, but she was a housewife living with her husband in the City of Ponce, P. R., and had no personal participation in the farming operations of the Comunidad. In fact the debtor testified that the limit of her intervention was to receive her share of the profits. She professed to know only from hearsay that the properties had been operated by the Bank of Nova Scotia from 1933 to the filing of the equity suit.

We think, also, that the debtor was not shown to be a "farmer" by virtue of her poultry business. Assuming that a housewife's raising of a few chickens in the back yard of a city home is the "production of poultry" within the meaning of the definition (cf. *In re McMurray*, 8 F. Supp. 449, 454), the debtor will not qualify under this category, unless the principal part of her income is derived from this poultry business. Whether the clause "if the prin-

sions. (No change.)" This can hardly be taken literally for, as has been pointed out, Section 75(r) has certainly been amended to the extent that the old definition of "farmer" therein contained is no longer to be applied to Section 4(b). "No change" seems to refer not to the definition, but to the substantive and procedural provisions dealing with relief to distressed farmers. It may be noted further that Section 2 of the Chandler Act, 52 Stat. 939, does specifically amend Section 75 in certain particulars not now relevant.

principal part of his income is derived from any one or more of such operations" modifies "an individual personally engaged [fol. 469] gaged in farming or tilling of the soil" need not now be decided; it certainly modifies the clause immediately preceding it, referring to "an individual personally engaged * * * in the production of poultry * * *" The debtor testified that she received \$50 a month from the poultry business. In 1937 she received \$20,000 as her share of benefit payments by the Department of Agriculture on account of the 1935 sugar crop of the Comunidad, and she claims that other substantial sums (amounts not indicated) are due her as profits from this "integrated enterprise", as would appear upon an accounting. As previously stated, the profits of the enterprise, since 1933, have been devoted to the payment of debts for which the Comunidad and its members, including appellant, were liable. On this record the debtor failed to establish, indeed made no effort to establish, that the principal part of her income was derived from the production of poultry; hence the District Court was not in error in its ultimate conclusion that "This Court as a bankruptcy court is without jurisdiction to entertain the debtor's petition filed herein."

A petition under Section 75 might have been filed by the Comunidad itself. Paragraph 4 of subsection (s) expressly extends the application of its provisions "to partnerships, common, entirety, joint, community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers, and any such parties may join in one petition." 49 Stat. 945. But we are dealing here with an individual petition filed by one member of the Comunidad.

The District Court had power to award costs. 28 U. S. C. § 80; *Devost v. Twin State Gas & Electric Co.*, 252 Fed. 125 (C. C. A. 1st, 1918); *In re Snowden*, 36 F. (2d) 282 (D. C. Calif. 1929); *The Commercial Guide*, 23 F. (2d) 135 (D. C. Wash. 1927); *Phoenix-Buttes Gold Mining Co. v. Winstead*, 226 Fed. 863 (D. C. Calif. 1914).

The appellant filed petitions in Nos. 3487 and 3488 for correction of the records. These petitions have been considered by the court and are found to be without merit.

The decree of the District Court is affirmed.

[fol. 470] IN UNITED STATES CIRCUIT COURT OF APPEALS

FINAL DECREE—January 10, 1940

This cause came on to be heard October 18, 1939, upon the transcript of record of the District Court of the United States for Puerto Rico, and was argued by counsel for appellee; appellant submitting on brief by leave of court.

Upon consideration whereof, It is now, to wit, January 10, 1940, here ordered, adjudged and decreed as follows: The decree of the District Court is affirmed.

By the Court,

Arthur I. Charron, Clerk

[fol. 471] IN UNITED STATES CIRCUIT COURT OF APPEALS

Order denying petition for rehearing

Thereafter, to wit, on February 7, 1940, a petition for rehearing was filed by appellant, which petition was denied on February 21, 1940.

[fol. 472] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FIRST CIRCUIT, OCTOBER TERM, 1939

No. 3487.

CARLOTA BENITEZ SAMPAYO, Defendant, Appellant,

v.

THE BANK OF NOVA SCOTIA, Complainant, Appellee

Appeal from the District Court of the United States for
Puerto Rico

Before Wilson, Magruder and McLellan, JJ.

OPINION OF THE COURT—Filed February 21, 1940

Upon Petition for Rehearing

PER CURIAM:

Challenging our holding that the new definition of "farmer" in the Chandler Act applies to proceedings under Section 75 of the Bankruptcy Act, appellant cites a general

order in bankruptcy relating to petitions under Section 75 filed by personal representatives of deceased farmers. General Order No. 50 (9), effective February 13, 1939, reads in part as follows: "• • • The petition shall show to the satisfaction of the district court that the decedent at the time of his death was a farmer within the meaning of subdivision (r) of section 75. • • •" (305 U. S., App. p. 30). Form in Bankruptcy No. 63, accompanying the General Orders in Bankruptcy, provides that a petition under Section 75 shall recite that the petitioner "is primarily bona fide personally engaged in producing products of the soil [or that he is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations]".

This provision of General Order No. 50 (9) was carried over without change from old General Order L (9) promulgated April 17, 1933 (288 U. S. 643). Form 63 was carried over without substantial change from the earlier Form No. 65 (288 U. S. 646).

The inference is that the Supreme Court in its latest revision of the General Orders in Bankruptcy, relating to proceedings under Section 75, has assumed that the old definition of "farmer" in Section 75 (r) was not affected by the Chandler Act. Had this matter been called to our attention before, we should have regarded even a tacit interpretation put upon the Chandler Act by the Supreme Court as of great importance, though not as compelling as would be a considered decision of the Supreme Court in a litigated case.

In determining whether we should draw the inference which appellant would have us draw from the general order in bankruptcy above referred to, it is noteworthy that the Supreme Court itself has had occasion to disregard a general order in bankruptcy inadvertently carried over and republished after a significant but unnoticed change of the law. *Meek v. Centre County Banking Co.*, 268 U. S. 426. In all candor we cannot now say that we believe our previously announced conclusion to be erroneous. That conclusion seemed to us plainly indicated on the face of the statute.

We are far from implying that appellant would qualify as a "farmer" even if the old definition in Section 75 (r) is still in effect. If *Shyvers v. The Security First National Bank*, decided by the Circuit Court of Appeals for the Ninth Circuit on December 21, 1939, is correct, appellant would seem not to be a "farmer" even under the definition [fol. 474] of Section 75 (r). We have not gone into this, because we believe that the applicable definition is the new one found in the Chandler Act.

The petition for rehearing is denied.

Thereafter, to wit, on March 13, 1940, mandate issued to the District Court.

[fol. 475] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 476] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted.

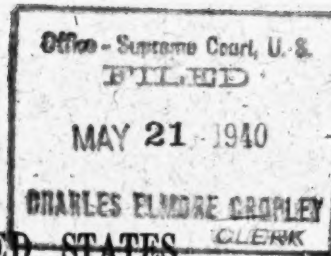
And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: In forma pauperis enter F. B. Fornaris. File No. 44,434, U. S. Circuit Court of Appeals, First Circuit, Term No. 90, Carlota Benitez Sampayo, Petitioner, vs. The Bank of Nova Scotia. Petition for a writ of certiorari and exhibit thereto. Filed May 21, 1940. Term No. 90 O. T. 1940.

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FILE COPY



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 90

CARLOTA BENITEZ SAMPAYO,

Petitioner:

vs.

THE BANK OF NOVA SCOTIA.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT AND BRIEF IN SUP-
PORT THEREOF.**

F. B. FORNABIS,

Ponce, P. R.,

Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 90

CARLOTA BENITEZ SAMPAYO,

Petitioner.

vs.

THE BANK OF NOVA SCOTIA.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT.**

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Your petitioner Carlota Benitez Sampayo, prays this Court for the issuance of a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit, to review a final decision and decree of the said Appellate Court, affirming a decree of the District Court of the United States for Puerto Rico, entered on the 10th day of January, 1940 (109F (2) 743; R. 456) in connection with which final decision and decree a Petition for Rehearing was filed, which petition was denied on the 21st day of February, 1940 (R. 66).

Statement of the Matter Involved.

The opinion of the appellate court which forms part of the record (R. 53) deals with appeals No. 3486, 3487 and 3488, although the three appeals were never consolidated in the appellate court.

It was your petitioner's intention to file petitions for writs of certiorari to review each and every one of the decisions covered by said opinion but, due to her penury and other unsurmountable obstacles, it has been found necessary to file only a petition for writ of certiorari to review only the decision and decree which deals with appeal No. 3487, originating from your petitioner's farmer-debtor proceedings, initiated and maintained pursuant to the provisions of Section 75 of the Bankruptcy Act. (Section 203, Title 11, Bankruptcy, U. S. Code, as amended.)

Were this petition to be based exclusively on the elaborate opinion rendered on January 10, 1940, in connection with her said appeal No. 3487, your petitioner would feel constrained to enter into various phases of the situation which shall not be dealt with, it being that in the opinion of the court upon petition for rehearing (R. 66) it is definitely stated that in rendering the decision and decree which your petitioner seeks to review, the appellate court based itself solely on its interpretation to the effect that it was and is the definition of "farmer" inserted in Chapter 1, Section 1 (17) of the Chandler Act, entitled "Definitions" and not the definition of "farmer" appearing in Section 75, sub-section (r) of the Bankruptcy Act (49 Stat. 246) that applies in proceedings under said Section 75, after the effective date of the Chandler Act (52 Stat. 840).

Under the circumstances and in view of the fact that this petition and the brief which is to accompany it must be prepared and mailed to the Clerk of this Hon. Court within forty-eight hours, your petitioner shall limit the issue to the

question of legislative intent decided by the opinion pertaining to said appeal No. 3487 and such other questions as it may seem absolutely necessary to place before this court.

Reasons for Granting the Writ

1. It is respectfully submitted that the principal decision of the Circuit Court of Appeals to the effect that it was and is the definition of "farmer" inserted in Chapter 1, Section 1 (17) of the Chandler Act, entitled "Definitions" and not the definition of "farmer" appearing in Section 75, sub-section (r) of the Bankruptcy Act that applies in proceedings under said Section 75, after the effective date of the Chandler Act, is clearly erroneous, in conflict with the decision of another circuit court of appeals on the same matter, is probably untenable and in conflict with the weight of authority, while at the same time the question of Federal law decided is important and of general application and the matter should be settled for the country by this court. Your petitioner further respectfully submits that after said decision was rendered solely on the basis of interpretation of the legislative intent, the Congress of the United States has made its intent in the premises definitely known, through an amendment of the definition of "farmer" incorporated in said Section 75 (r), said expression of legislative intent being radically opposed to the letter and spirit of the decision which your petitioner seeks leave to review.

Your petitioner's contentions hereinbefore set forth are based, amongst others, on the following:

(a) "Section 75 (a) to (r) is unaffected by the Chandler Act, except as it is expressly amended by it." *Home Owners Loan Corporation v. Creed*. (C. C. A. 5th. Cir., 1939), — P. 2d., — not yet reported. Citation obtained from the January 5, 1940 Current Matter Section of Prentice-Hall

Bankruptcy Service, p. 8527 under the title "Creditors and liens amenable to Section 75 (a) to (r)."

(b) The 1938 edition of the United States Code (11 U. S. C. Section 203 (r) as pointed out by the appellate court on page 12 of the printed Opinion, shows Section 75 (r) as unaffected by the Chandler Act. The U. S. Code expressly provides that its contents are prima facie the law.

(c) Reference to the official printed report of hearings had on November 23, 1937, January 19, 21, 25 and February 15, 1938, before a subcommittee of the Judiciary, United States Senate, Seventy-fifth Congress, Second Session on H. R. 8046 (which resulted in the promulgation of the Chandler Act) will show that the Hon. Walter Chandler, in his statement to the U. S. Senate, relative to what "the House Committee did with reference to this legislation" (p. 1) after having pointed out that some new definitions had been added (p. 3) made the following statement:

"In addition to these original 70 sections you will remember that the former bankruptcy or moratorium act, known as the Frazier-Lemke Act, which was known as section 75, was passed in 1933 or 1934. *We did not touch that section, and it is not affected by this act.*" (p. 5).

(d) Examination of the official printed report of the hearings had on December 17 and 18, 1937 and January 5, 6 and 7, 1938 before the Special Sub-Committee on Bankruptcy of the Committee on the Judiciary, Seventy-fifth Congress, second and third sessions on S. 2215 and H. R. 6452 will develop the fact that around the same time that Congress, through its Committee and Sub-Committee on the Judiciary was discussing the legislation which eventually resulted in the promulgation of the Chandler Act, was also holding separate hearings on other separate legislation, pertaining to Section 75 of the Bankruptcy Act, the Hon. William Chand-

ler presiding (pp. 1, 53). One of the proposed amendments to said Section aimed at making Section 75 of the Bankruptcy Act permanent (pp. 181, 193) like the other provisions of the Bankruptcy Act which were being *separately* rewritten and revised, in the form of permanent legislation. Report No. 1833 submitted by the Hon. Walter Chandler on February 18, 1938, to accompany S. 2215 (75th Congress, 3rd Session) shows that the House Committee on the Judiciary after considering the Farm Moratorium Law "determined, after extensive hearings and thorough investigations, that the act, in its present form, should not be made a permanent part of the Bankruptcy law, and approves S. 2215 only for the purpose of extending the statute for 2 years from March 3, 1938. DURING THE EXTENDED TERM, IF IT APPEARS THAT SECTION 75 SHOULD BE MADE PERMANENT, APPROPRIATE CHANGES IN THE LAW CAN BE MADE." (p. 2, underscoring and capitals supplied.)

Your petitioner respectfully represents to the Court that Public Law, No. 439, 75th Congress, Chapter 41, 3rd Session, approved March 4, 1938 and which was the outcome of Report No. 1833, hereinbefore referred to on S. 2215, and through which it was decided that "the Act" (Section 75) the way it stood, should not be amended immediately, is the one that rewrote sub-section (c) of Section 75. The Chandler Act having been approved shortly thereafter, i. e., June 22, 1938 it is evident that the "farmer" referred to in said sub-section (c) of Section 75 was intended to be the one defined in Section 75 (r) as it was in force on the date of such amendment, namely, March 4, 1938 and not the "farmer" in a definition incorporated more than three months thereafter in Section 1 (17) of the Chandler Act, which Act, as stated by the Hon. Walter Chandler, *did not touch that Section (Section 75) which was NOT AFFECTED by said Chandler Act.* (See (c) hereinabove.)

(e) In the case of proceedings for the relief of debtors which were incorporated in the Chandler Act in the form of permanent legislation, it was definitely provided that the provisions of the original Bankruptcy Act, as amended through the Chandler Act (Chapters I to VII, inclusive) insofar as they were not inconsistent or in conflict with the provisions of the particular chapter, apply in proceedings under the said chapter and that for the purposes of such application, provisions relating to "bankrupts" shall relate also to "debtors," etc. (Chapter X, Sec. 102; Chapter XI, Sec. 302; Chapter XII, Sec. 402; Chapter XIII, Sec. 302.) No such provision was incorporated in the Chandler Act in connection with Section 75 of the Bankruptcy Act. Consequently, and following the well established rule to the effect that what includes one, excludes the other, it follows that it was not intended by Congress to have said provisions of Chapters I to VII apply in the case of debtors availing themselves of the relief made available to them by Section 75 of the Bankruptcy Act, except as provided in said Section. This view is sustained by the construction of the particular Federal statute made through the decision cited under paragraph (a) hereinabove, which construction would not seem to be erroneous, in view of what has been hereinabove set forth.

(f) The General Orders in Bankruptcy amended and established by this court on January 16, 1939 released January 27, 1939 and effective February 13, 1939 include General Order 50 which in its pertinent part reads as follows:

(9) * * * "The petition shall show to the satisfaction of the district court that the decedent at the time of his death *was a farmer within the meaning of subdivision (r) of Section 75* * * *" (not of Section 1 (17) of the Chandler Act.) (Underscoring supplied.)

Your petitioner respectfully submits that although said portion of sub-division (9) of New General Order 50 refers to the filing of a petition under Section 75 by the representative of a deceased farmer, the phrase cited is nevertheless conclusive to the extent of indicating that, in the opinion of this court it is sub-section (r) of Section 75 and not Section 1 (17) of the Chandler Act that governs the definition of a "farmer" in proceedings under Section 75. The fact that New General Order 50 was established on January 16, 1939, that is, almost seven months after the Chandler Act was approved (June 22, 1938) eliminates any doubt as to whether it was intended or not to have said definition of "farmer" continue in effect after the effective date of the Chandler Act (September 22, 1938.)

(g) Through the Order of January 16, 1939 hereinbefore referred to, this court also amends and establishes Forms in Bankruptcy. Form No. 63 established through said Order, entitled "Debtor's Petition in Proceedings under Section 75 of the Bankruptcy Act" follows the definition of "farmer" embodied in subsection 75 (r) and expressly includes as one of the alternative jurisdictional qualifications the phrase "or the principal part of whose income is derived from one or more of the foregoing operations" just as it appeared in old form 65. The word "or" has not been substituted for the word "if" as is the case with the definition in Section 1 (17).

(h) The opinion rendered in the case of *In re Horner* (*Horner v. Second Nat. Bank of Beloit, Wis.* (C. A. A. 7th. Cir., 1939), 104 F. (2d) 600 your petitioner respectfully submits, further confirms the consensus of opinion to the effect that it is the definition of "farmer" appearing in sub-section (r) of Section 75 and not the one incorporated in Section 1 (17) of the Chandler Act that governs in pro-

ceedings under said Section 75, even after the effective date of said Act.

(i) Through the promulgation of the Act designated as Public — No. 423— 76th. Congress—Chapter 39— 3d. Session (S. 1935) approved March 4, 1940, the Congress of the United States manifested the legislative intent as to this question. Said expression of intent is definitely contrary to that attributed to Congress by the appellate court. While the interpretation of the legislative intent arrived at by the appellate court is based upon the premises that the definition of "farmer" inserted in Chapter 1, Section 1 (17) of the Chandler Act, was intended to apply to Section 4 (b) of the Bankruptcy Act; that were the definition of "farmer" incorporated in sub-section (r) of Section 75 to be considered as part of the context of sub-sections (c) and (s) of said Section, it must be equally considered as part of 4 (b) and old Section 74; that there could not exist an intention on the part of Congress "to reintroduce the awkward situation of having "farmer" mean one thing in Section 4 (b) and something else in Section 75"; that the definition of farmer which is presumed to apply to Section 4 (b) "necessarily amends Section 75 (r)" and that "the Chandler Act amendment of Section 1 (17) by implication repeals Section 75 (r) so far as the old definition of 'farmer' is inconsistent with the new", Congress, through the promulgation of the Act cited at the beginning of this paragraph (i) establishes that Section 75 (r) has continued to apply to Section 4 (b), having simply eliminated through said legislation the reference to Section 74 (no longer in force) so that the "awkward situation" referred to, does not, in fact exist and that it is the definition in Section 75 (r) and not that in Section 1 (17) that applies to Section 4 (b) and Section 75 of the Bankruptcy Act. Careful comparison of the last definition of "farmer" incorporated in

the Bankruptcy Act through the Act of May 15, 1935, 49 Stat. 246 (which the opinion designates as "the old definition") with the definition as it now stands through the promulgation of the Act cited at the beginning of this paragraph (i) will disclose the ominous fact that both definitions are one and the same, with the only exception that in the case of the last mentioned one, the word "and" has been placed before the word "section 4 (b)" and the words "and Section 74" have been omitted. Obviously, through the promulgation of that latter legislation, Congress has definitely manifested its true legislative intent in no indefinite way and contrary to the intent attributed to it by the appellate court.

Prentice-Hall Bankruptcy Service, in its Report Number 19, dated March 21, 1940, at the beginning of the sheet designated as "Executive Sheet", attached to said Report, and under the caption "Matters of Special Interest" states the following with reference to the Act referred to at the beginning of this paragraph (i):

"Life of Section 75 Extended."

"Act of March 4, 1940 extends to March 4, 1944, time within which petition under Section 75 may be filed. It also removes from subsection (r) reference to Section 74, no longer in Bankruptcy Act. Reprinted pages to reflect these changes are contained in this report."
(Underscoring supplied.)

(j) The question of federal law decided is important and of general application in that not only has the appellate court erroneously established jurisprudence to the effect that subsection (r) is no longer in full force and effect as regards proceedings initiated under Section 75, but also that the definition of "farmer" therein contained does not apply to proceedings under the general bankruptcy Act.

It is therefore, respectfully submitted that the matter should be settled for the country by this court.

Should the decision which your petitioner aims to have reviewed be permitted to stand, the rights of many farmers who now or later on may find themselves involved in bankruptcy proceedings, as well as those of their creditors, might be seriously jeopardized and adversely and fatally affected.

The principal difference between the definition of "farmer" as it appears in Section 75 (r) and that contained in Section 1 (17) of the Chandler Act consists in that while in the former case a person may usually qualify as a "farmer" by establishing that his principal income is derived from one or more of the "foregoing operations" in the case of the latter, such person, besides qualifying as a farmer, must have also received his principal income from farming operations. This condition of affairs if permitted to continue for any length of time, would obviously hinder and delay the financial rehabilitation of many an honest farmer or even bring financial disaster and ruin to many persons who could otherwise rehabilitate themselves through orderly liquidation and might even result in placing the stigma of bankruptcy on farmers who are not amenable to involuntary bankruptcy proceedings, under a proper interpretation of the law for the case made and provided.

This court has previously established the premise that a bankrupt is a financial wreck and that the question of interest as well as others must be considered in that light.

Still, if the decision which your petitioner seeks to review were permitted to stand, the most inveterate and conspicuous farmer in this country would be amenable to involuntary bankruptcy proceedings, as soon as through some misfortune, he ceased to receive his principal income from one or more of the farming operations specifically listed in

said Section 1 (17) of the Chandler Act. Such interpretation would be contrary to the theory enunciated by this court in the Beach case (*First National Bank v. Beach*, 301 U. S. 435 (1937).) when it stated "One does not cease to be a farmer because drought or wind or pest may have rendered the farm barren."

The precise form and manner in which this erroneous decision adversely affects your petitioner shall be shown in propounding some of the other questions which it is aimed to review through this petition.

2. Your petitioner respectfully submits that the question of legislative intent having been erroneously decided, as hereinbefore set forth, and your petitioner qualifying as a farmer under Section 75 (r) (as shall be hereinafter shown) the appellate court should have declared all legal proceedings initiated or maintained after the filing of the petition under Section 75 and, in particular, the proceedings had thereafter in Equity Suit No. 2151 then pending before the District Court of the United States for Puerto Rico (including the sale at auction of your petitioner's property and assets, and the confirmation thereof) to be null and void and of no legal consequence, pursuant to the mandatory and self-executing stay provisions of sub-sections (o) and (p) of said Section 75. This point requires no argument since same was decided by this court on January 2, 1940, in line with your petitioner's contentions, in the cases entitled *Kalb et al. v. Feuerstein et al.* and *Kalb v. Luce et al.*, which cases bear Nos. 120, 121, before this court.

3. On page 8 of said printed Opinion it is stated that "In addition to her interest in the farming operations of the Comunidad, appellant based her claim to be a 'Farmer' on the fact that at her home in the City of Ponce, where she lives with her husband, she has for several years engaged in a small way in raising and selling poultry

and eggs, from which she derives a profit of about \$50.00 a month." (\$600.00 per year.)

Your petitioner respectfully represents to the Court that there is no proof in the record on appeal herein to the effect that she has for several years engaged in raising and selling poultry and eggs "*at her home in the City of Ponce, P. R.*" On the contrary, the record shows that your petitioner went into the business of raising chickens while residing at a *farm* leased by her in the outskirts of the town of Guaynabo, P. R., and that it was only after said chickens had developed into grown birds, that the birds were transferred from the farm at Guaynabo, to this city of Ponce.

Your petitioner further, respectfully, represents to the Honorable Court that, when viewed in the light of the limitations to which poultry business is necessarily subjected to in Puerto Rico, due to the small size of the island and of its urban population consuming high grade poultry products, as well as to various other reasons, a poultry business consisting of 110 chickens and several hundred pigeons (Findings of Fact—R. 21) may not be classed as a small business or as a business handled in a small way. This is specially so in view of the fact that, as stated in the Opinion, said business produced a profit of \$50.00 per month or \$600.00 per year.

Your petitioner alleges that in all probability the Appellate Court overlooked the fact that utility pigeons also fall within the category of poultry as held by the learned District Judge. (Findings of Fact, end of second paragraph thereof, R. 21.)

Your petitioner further respectfully represents to the Honorable Court that in the case of the *First National Bank v. Beach*, 301 U. S. 435, where debtor, appellee Beach, "was occupied *principally* in raising poultry and eggs, having two hundred chickens in 1933, and about fifty from 1935 to the time of the trial (second paragraph of the opinion de-

livered by Mr. Chief Justice Cardozo) this court affirmed the decision, thus establishing the precedent to the effect that a person owning about fifty chickens and deriving \$200.00 per year from the sale of poultry and eggs, was primarily engaged in the production of poultry and poultry products in their unmanufactured state. Italics and parenthesis supplied.

4. The first full paragraph appearing on page 8 of said printed Opinion, would seem to indicate that the appellate court failed to take into consideration the fact that Schedule A-3 shows a personal debt owed by your petitioner to E. Arjona Siaca, Esq., (who approved her proposal) in the sum of \$300.00 "for legal fees in connection with work performed for petitioner *in the insular courts* and other legal services rendered to date," and that your petitioner showed an item of \$1,780.00 due and owing to her by Mrs. Adela Rosaly Capo viuda de Seix.

Your petitioner further respectfully represents to the Court that although she seasonably prayed for leave to file amended schedules, in order to include in same certain other assets and liabilities inadvertently omitted, including a claim against Respondent, The Bank of Nova Scotia in Equity Suit No. 2350 said leave was denied. (R. 27, docket entries of December 10 and 19, 1938.)

5. In the case of *First National Bank v. Beach*, cited on page 13 of the printed Opinion to which this petition refers, Mr. Chief Justice Cardozo, who delivered the opinion of this Court, said:

"Was respondent a farmer because 'personally bona fide engaged primarily in farming operations' or because 'the principal part of his income was derived from farming operation.'?"

"We do not try to fix the meaning of either of the two branches of this definition, considered in the ab-

stract. The two are not equivalents. They were used by way of contrast."

"The words 'primarily engaged', as we find them in the first branch of the definition, do not constitute a term of art. The words 'income derived from farming operations' do not constitute such a term."

Your petitioner respectfully submits to the Court that, irrespective of any other jurisdictional qualifications, the record of the above entitled cause conclusively establishes that she is a "farmer" pursuant to the provisions of Section 75, because the principal part of her income was derived from one or more of the farming operations listed in Section 75 (r), at the time of the initiation of her farmer-debtor proceedings to which this petition refers and for quite some time prior to the filing of her petition under Section 75 of the Bankruptcy Act.

6. On page 13 of the printed opinion the appellate court states: "We think the District Court was right in concluding that Debtor was not 'personally engaged' in the farming operations of the Comunidad on Vieques Island. She was a party to the Community *contract* which designated her father as general manager, but she was a housewife living with her husband in the city of Ponce, P. R., and had no personal participation in the farming operations of the Comunidad." (Italics supplied.)

Your petitioner respectfully submits the following, in connection with those portions of the Opinion hereinbefore transcribed:

The contract referred to expired since the month of July 1935 (R. 233) and was never extended or renewed after that date. (R. 233). Consequently, the status thereafter was that of a state of indivision in a hereditary joint proprietorship ("Comunidad") or "Sucesion."

The case of *In re Wright's Estate*, 17 F. Supp. 908, establishes that operation through a manager does not cause

such operation to cease to be the farmer-debtor's operation to be her own operation, if it was for her benefit and she furnished the means of carrying it on, which your petitioner did, through the loans made to the manager *de facto* and later on to the Receiver, which were charged proportionately to her.

The letter addressed by your petitioner and others to the Bank of Nova Scotia on February 19, 1937 shows that even at that prior date your petitioner was considered as one of the "*Successors to Comunidad Jose J. Benitez e Hijos.*" Said letter was offered in evidence by said Bank at the trial of Equity Suit 2151 and identified as exhibit 67 for complainant. The negotiations carried into execution through that letter were subsequently approved and confirmed by the District Court, through its Decree of August 22, 1938 (See Finding of Fact XXVII, forming part of said Decree). Consequently, the District Court also confirmed your petitioners' status as one of the successors to the defunct Comunidad and as a "farmer-producer", as defined in the Agricultural Adjustment Act and Jones-Costigan Act, under which the benefit payments involved accrued to your petitioner as such "farmer producer".

7. On page 13 of the printed Opinion the following statement appears:

"She professed to know only from heresay that the properties had been operated by The Bank of Nova Scotia from 1933 to the filing of the equity suit."

Your petitioner respectfully represents that she answered "so they say" when questioned as to such alleged possession, in a sarcastic mood, but that such answer could hardly be interpreted in the sense that she knew it from hearsay, or admitted such alleged possession, in view of her immediate subsequent statement to the effect that she knew that it was her father who was managing the business for the last few years.

Your petitioner further respectfully represents to the Court that as regards the advance benefit payments at the rate of 60 cents per ton of sugar cane (See testimony over the subject produced by Mr. A. E. Griffin, Manager of The Bank of Nova Scotia, she could not have qualified for said payment unless she qualified as "producer" as stipulated in section 10 (a) of the Puerto Rico Sugar Cane Production Adjustment Contract. It was only in the case of the "final payment" (See par. 19 (b) of said contract) that payment might be also effected to a crop lienholder, as per section 23 of said contract. It was for that reason that two separate checks were issued. The check for \$10,151.40, covered the advance benefit payment and the one for \$91,201.80 covered the final payment. The name of The Bank of Nova Scotia was not included as payee in the check for \$10,151.40 covering the advance payment because, unlike your petitioner, said Bank was not a "farmer-producer". Said Bank's name was included as payee in the check for \$91,201.80 as an alleged crop lienholder, which alleged status your petitioner challenged before the U. S. Secretary of Agriculture, whose failure to decide the issue eventually forced your petitioner into an unfavorable compromise.

8. The following has been extracted from pages 13 and 14 of the printed Opinion:

"We think also, that the debtor was not shown to be a 'farmer' by virtue of her poultry business. Assuming that a housewife's raising of a few chickens in the back yard of a city home is the 'production of poultry' within the meaning of the definition (cf. *In re McMurray*, 8 F. Supp. 449, 454), the debtor will not qualify under this category unless the principal part of her income is derived from this poultry business. Whether the clause 'if the principal part of his income is derived from any one or more of such operations' modified 'an individual personally engaged in farming or tilling of the soil' need not now be decided; it certainly modifies

the clause immediately preceding it, referring to 'an individual personally engaged . . . in the production of poultry . . .'. The debtor testified that she received \$50 a month from the poultry business. In 1937 she received \$20,000 as her share of benefit payments by the Department of Agriculture on account of the 1935 sugar crop of the Comunidad, and she claims that other substantial sums (amounts not indicated) are due her as profits from this 'integrated enterprise', as would appear upon and accounting. As previously stated, the profits of the enterprise, since 1933, have been devoted to the payment of debts for which the Comunidad and its members, including appellant, were liable. On this record the debtor failed to establish, indeed made no effort to establish, that the principal part of her income was derived from the production of poultry; hence the District Court was not in error in its ultimate conclusion that 'This Court as a bankruptcy court is without jurisdiction to entertain the debtor's petition filed herein.' "

For brevity's sake, your petitioner incorporates by reference at this point the statements appearing in paragraph 3 hereinabove, which statements, your petitioner respectfully submits, overcome the presumption to the effect that your petitioner was a housewife raising a few chickens *in the backyard of a city home* and besides establish that she was also engaged primarily in the production of poultry, within the meaning of Section 75 (r).

The following has been extracted from Note 2, appearing on page 5065 of the Prentice-Hall Bankruptcy Service, latest edition:

"The proceeding may be instituted only by the farmer himself; but the term 'farmer', as used in Section 75, means 'any individual who is personally bona fide engaged primarily in farming operations, or the principal part of whose income is derived from farming operations and includes the personal representative of a deceased farmer' (Underscoring supplied.)"

Your petitioner further respectfully submits that such part of the opinion as has been cited under this number is contrary to the pertinent holdings of this court in the Beach case. (*First National Bank v. Beach* 300 U. S. 435 1937) also contrary to *In re Horner* (C. C. A. 7th 164 F. (2d) 600).

In the case of *In re Horner* (*Horner v. Second Nat. Bank of Beloit, Wis.*) (C. C. A. 7th. Cir. 1939, 104 F. (2d) 600) the Circuit Court said:

“... “but in the instant case it is agreed that debtor derived the principal part of his income from the production of plants.” (Not mentioned in the second part of the definition of “farmer” incorporated in Section 75 (r) through the amendment promulgated by the Act of May 15, 1935, 49 Stat. 246.)

“We concluded that the undisputed facts disclosed that, for the purpose of section 75 (r), the debtor was ‘primarily bona fide personally engaged in producing products of the soil and that the principal part of his income was derived therefrom. The trial court erred in its holding that debtor was not entitled to the privilege and benefits of the act.’”

9. The appellate court was probably wrong in refusing to reverse the decision of the district court to the effect that your petitioner is not a “farmer”, pursuant to the provisions of Section 75 (r) of the Bankruptcy Act, for the following reasons:

(a) The record shows that your petitioner is a “farmer” since she was engaged in the production of poultry and poultry products in their unmanufactured state and on a business or commercial scale for some years prior and up to the initiation of the farmer-debtor proceedings to which this petition refers.

(b) The record further shows that your petitioner also qualified as a farmer because of the agricultural enterprise in which she has been engaged in the Island of Vieques,

P. R. since the year 1917 and continuously until after the filing her petition praying for relief under Section 75 of the Bankruptcy Act.

(c) The principal part of the income (in fact, all the income) received by your petitioner up to the time of the initiation of her said farmer-debtor proceedings originated from one or more agricultural operations specifically listed in Section 75 (r), as found by the appellate court.

(d) For all the other reasons hereinbefore set forth.

10. The appellate court was probably wrong in refusing to reverse the decision and decree challenged by your petitioner since issue was never legally joined in the district court on the question as to whether your petitioner was or was not a farmer, for the following reasons:

(a) The motion for dismissal which resulted in the decree of dismissal complained of, affirmed by the appellate court, was never verified under oath, (R. 8) although the issue as to lack of verification was seasonably raised by your petitioner in her answer. (R. 11.)

(b) Such procedure, once the issue was seasonably raised, contravenes the express provisions of Section 18 (c) of the Bankruptcy Act, as seasonably alleged by your petitioner in her answer (R. 12).

(c) The issue raised by the said Motion for Dismissal, which resulted in the Decree of Dismissal complained of affirmed by the appellate court, not appearing from the record of the proceedings, such issues could not be raised through motion or petition, said procedure being altogether inadequate and contrary to law.

11. The appellate court was probably wrong in refusing to reverse that part of the decision and decree of the district court which holds that your petitioner has no debts other

than those that may possibly arise by virtue of her secondary liability as a member of the defunct "Comunidad" since the record shows that your petitioner actually had certain debts not having any connection whatsoever with the affairs of the so-called "Comunidad" and that her alleged liability as a member of the "Comunidad" was not claimed and held to be secondary, but primary, to the extent that your petitioner has been deprived of her total interest in the agricultural enterprise in Vieques, of which she is a co-proprietor ("condomine" or "comunera" under our law) worth several hundred thousand Dollars, on the basis of action filed directly against your petitioner and the other co-proprietors and not against the defunct "Comunidad".

12. The appellate court was probably wrong in refusing to reverse that part of the decision and decree of the district court which holds that it was without jurisdiction to entertain your petitioner's said farmer-debtor proceedings, since such conclusion is contrary to law and to the facts of the case.

13. The appellate court was probably wrong in refusing to reverse that part of the decision and decree of the district court which requires your petitioner to pay costs since when a petition is dismissed exclusively on jurisdictional grounds, the court may not decree costs.

Wherefore, it is respectfully requested that this petition for a writ of certiorari be granted, and that the final decision and decree of the Circuit Court of Appeals for the First Circuit to which this petition refers, may be reversed by this Hon. Court.

And that your petitioner may have such other and further relief as may seem meet and proper,

Your petitioner will ever pray.

Ponce, Puerto Rico, May 18th, 1940.

F. B. FORNARI, *Counsel for Petitioner.*

UNITED STATES OF AMERICA,
Territory of Puerto Rico,
City of Ponce, ss:

I, Carlota Benitez Sampayo, being duly sworn, upon my oath depose and say: That I am of legal age, married, a farmer and a resident of Ponce, P. R. and the petitioner in the above entitled cause. That the foregoing petition has been prepared in accordance with my instructions and I have read same and that the facts stated therein are true to the best of my knowledge, information and belief.

CARLOTA BENITEZ SAMPAYO,
Petitioner, Affiant.

Affidavit No. 410.

Subscribed and sworn to before me by Carlota Benitez Sampayo of the personal circumstances hereinbefore set forth and to personally known, at Ponce, P. R. on this 18th, day of May, A. D. 1940.

GUILLERMO VIVAS ROSALY,
Notary Public.

BRIEF AND ARGUMENT IN SUPPORT OF PETITION.

Opinions Below.

The decision of the Circuit Court of Appeals having been limited in its scope to the affirmance of the decree of the District Court on jurisdictional grounds, the principal issues in the case as they are indicated under "Reasons for Granting the Writ" do not require an analysis or a lengthy discussion of the terms thereof.

As far as your petitioner has been able to ascertain, the opinion in the District Court was never printed or reported. That of the Circuit Court of Appeals, dated January 10, 1940, has been reported as *Benitez v. Bank of Nova Scotia* (C. C. A. 1st Cir., 1940) in 109 F. (2d) 743. Your petitioner is under the impression that the printed opinion upon petition for rehearing (R. 66) in which appellate court states that its previous decision was based exclusively upon the question of legislative intent referred to at length in the petition to which this brief refers, has not as yet been reported.

Jurisdiction.

The jurisdiction of this Court is invoked under subsection (n) of Section 75 and Section 24 (c) of the Bankruptcy Act (Sec. 203, Title 11, Bankruptcy, U. S. Code, as amended) and Section 240 of the Judicial Code of the United States, as amended by the Act of February 13, 1925 (Section 347, Title 28 U. S. C. A.).

The Facts.

The facts pertinently to be considered are fully set forth in the petition.

Specifications of Errors.

The errors upon which your petitioner relies and which it is intended to urge, are indicated in the petition to which this brief refers, under "Reasons for Granting the Writ."

Principal Question Presented.**1.**

The decision and decree of the Circuit Court of Appeals to the effect that it is the definition of "farmer" inserted in Chapter 1, Section 1 (17) of the Chandler Act (52 Stat. 840), entitled "definitions" and not the definition of "farmer" found in subsection (r) of Section 75 of the Bankruptcy Act (49 Stat. 246) that applies in proceedings under said Section 75, after the effective date of said Chandler Act, is clearly erroneous, in conflict with the decision of another Circuit Court of Appeals on the same matter, is probably untenable and in conflict with the weight of authority. Besides, said decision interprets the legislative intent in a manner which is directly opposed to the intent ratified by the Congress of the United States at a later date.

Your petitioner having set forth in detail in the petition to which this brief refers the grounds on which she bases the contentions hereinabove set forth, begs leave to reproduce by reference at this point paragraph 1 of her petition appearing on pages 3 to 11 thereof under "Reasons for Granting the Writ."

The definition of "farmer" appearing in subsection (r) of Section 75, when your petitioner initiated her farmer-debtor proceedings under said section, read as follows:

"For the purpose of this section 4 (b) and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resi-

dent of any county in which such operation occur."
(Underscoring supplied.)

The definition of "farmer" inserted in Chapter 1, Section 1 (17) of the Chandler Act which the Circuit Court of Appeals has held to apply on proceedings instituted under Section 75 of the Bankruptcy Act, after the Chandler Act became operative and that it "necessarily amends section 75 (r)," reads as follows:

"(17) 'Farmer' shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations." (Underscoring supplied.)

Public—No. 423, 76th Congress, Chapter 39, 3d Session (S. 1935) which your petitioner contends to represent a decided reassertion of the legislative intent, contrary to the decision complained of, reads as follows:

"An Act to extend until March 4, 1944, the time during which petitions may be filed by farmers under section 75 of the Bankruptcy Act.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 75 (c) of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, as amended, is amended to read as follows:

"(c) At any time prior to March 4, 1944, a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. The petition or answer of the farmer shall be accompanied by his schedules. The petition and answer shall be filed with the court, but shall, on request of the farmer or creditor, be received by the conciliation commissioner for the county in which

the farmer resides and promptly transmitted by him to the clerk of the court for filing. If any such petition is filed, an order of adjudication shall not be entered except as provided hereinafter in this section."

Sec. 2. Section 75 (r) of such Act is amended to read as follows: "(r) For the purposes of this section and section 4 (b) the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur.

Approved March 4, 1940.

Were the decision of the Circuit Court of Appeals to the effect that it is Section 1 (17) of the Chandler Act and not subsection (r) of Section 75 that applies in proceedings instituted under said Section 75, and under the General Bankruptcy Act, permitted to stand, the definition of "farmer" ratified by Congress through the Act of March 4, 1940 hereinabove transcribed would be affected in the following fundamental aspects:

(a) Said definition of "farmer" of Section 1 (17) would be the one to apply in proceedings initiated under Section 4 (b) and 75 of the Bankruptcy Act, instead of the definition of subsection (r) of said Section 75, as ratified by Congress through said Act of March 4, 1940. Still, Section 1 of Chapter 1 of the Bankruptcy Act, entitled "Definitions" expressly states at the beginning thereof that the words and phrases dealt with (including the definition of "farmer" in Section 1 (17) shall be construed as specified, "unless the

same be inconsistent with the context." Obviously, in the light of the ratification of legislative intent promoted through said Act of March 4, 1940 hereinabove transcribed, the definition of "farmer" in subsection (r) of Section 75, is part of the context of subsections (c) and (s) of said Section and of the context of Section 4 (b) of the Bankruptcy Act. (Underscoring supplied.)

(b) In order to qualify as a "farmer", a person would not have to be *primarily, bona fide* personally engaged in *producing products of the soil, etc.*, but would simply have to be *personally* engaged in *farming or tillage of the soil* or in any of the operations listed, provided the principal part of his income were derived "from any one or more of the foregoing operations". This would certainly open the way for unscrupulous persons to qualify as "farmers", contrary to the legislative intent. For instance, a person not a bona fide farmer could nevertheless, by leasing a farm which produced the necessary income and engaging personally in its operation either avoid becoming amenable to involuntary bankruptcy proceedings or else take advantage of the relief provided exclusively for *bona fide farmers* by Section 75 of the Bankruptcy Act.

(c) It would bar proceedings under Section 75 of the Bankruptcy Act to a person who derived the principal part of his income "from any one or more of the foregoing operations, contrary to the opinion of *First National Bank v. Beach* 301 U. S. 435 (1937) as reproduced on page 15 of the petition to which this brief refers, to the effect that the two branches of the definition of "farmer" in subsection (r) of Section 75 "are not equivalents" but, on the contrary "were used by way of contrast" and that neither of the said two branches "constitute a term of art."

As already established on page 10 of the petition to which this brief refers, the Act of March 4, 1940, hereinbefore

transcribed, simply aimed at removing from the definition of "farmer" in subsection (r) of Section 75 the reference to Section 74, for the simple reason that, as stated by Prentice-Hall Bankruptcy Service (see citation on page 10 of the petition) it is "no longer in the Bankruptcy Act." After the promulgation of said Act of March 4, 1940 which, as regards Section 75 (r) (with the exception of eliminating the words "and Section 74" and adding the word "and" between "this section" and "section 4 (b)" in order to effect the purpose of eliminating all reference to Section 74) is a word by word repetition of said Section 75 (r) as it stood prior to the promulgation of the Chandler Act, there can be no doubt but that it was never the intention of Congress to create an impression to the effect that, as stated in the opinion, "the Chandler Act amendment of Section 1 (17) by implication repeals Section 75 (r), so far as the old definition of "farmer" is inconsistent with the new or that "the applicable definition is found in the new Section 1 (17)", specially so as regards proceedings initiated under Section 75, which must be necessarily governed by the definition of Section 75 (r). This being so, it follows that all other portions of the opinion which originate from that premise, are likewise erroneous and should be reversed.

Preliminary Statement as to Other Questions Presented.

Were your petitioner to be guided by the statements appearing towards the end of the opinion rendered by the Circuit Court of Appeals in deciding her Petition for Rehearing (R. 68) your petitioner would be tempted, due to lack of time, to limit this brief and argument to the question hereinbefore presented and to one or two others which, being of a jurisdictional nature, may be properly raised at any stage of the proceedings. Nevertheless, your petitioner

is under the impression that in stating in its said opinion (R. 68) that it has not gone into the other questions which would establish that your petitioner is not a farmer because it is believed that "the applicable definition is the new one found in the Chandler Act", the Circuit Court of Appeals overlooked the fact that at least most, if not all of the other features on which it bases those conclusions, were covered in the opinion rendered on January 10, 1940 (R. 53).

In view of this uncertainty, your petitioner shall proceed to discuss in this brief the other questions raised through the petition, so that, in case the writ of certiorari shall be granted, your petitioner may be in a position to appeal to the discretion of this court to have all the questions presented definitely disposed of. Otherwise, her penury and other unsurmountable obstacles might make it impossible for your petitioner to ever place such other questions before this court.

Second Question Presented.

2.

The Question as to the Applicable Definition of "Farmer" Having Been Erroneously Decided and Your Petitioner Qualifying as a Farmer Under Section 75 (r), All Legal Proceedings Initiated or Maintained Against Your Petitioner After the Filing of the Petition Under Said Section 75 Should Be Declared to Be Null and Void and of No Legal Consequence Whatsoever.

As stated on page 11 of the petition under this point, your petitioner bases her contention on the mandatory and self-executing stay provisions of subsections (o) and (p) of Section 75. Also on the provisions of subsection (n) of said Section.

Your petitioner not having been able to bring before this court a complete record of all the proceedings thus illegally

initiated or maintained, she must necessarily limit this prayer to the sale in execution of certain pledges held by a Special Master on October 13, 1938 and the order of confirmation thereof entered by the District Court at a later date as well as the order approving the deed of conveyance subsequently entered.

As stated at the beginning of the opinion pertaining to Appeal No. 3487, your petitioner filed in the District Court her petition for composition or extension under Section 75 of the Bankruptcy Act "one hour before the foreclosure sale pursuant to said decree." Under the circumstances and in view of the jurisprudence established in the premises by this Court in the case of *Kalb et al v. Feurstein et al.* and *Kalb v. Luce et al.*, which cases bear Nos. 120 and 121 before this Court, it seems altogether unnecessary to enter into protracted argument relative to the uncontrovertible fact that said sale in execution thus illegally held, as well as the order confirming said sale and the order approving the deed of conveyance are null and void and of no legal consequence since the District Court, sitting as a court of equity lacked jurisdiction to effect said sale or to enter the orders referred to. As stated in the opinion of the District Court (R. 19) "the fact that a judge of a federal court sitting in equity could protect the rights of all the parties as well as if he were sitting in bankruptcy could not affect the jurisdiction of the Bankruptcy Court upon the filing of a petition by a farm debtor under Section 75 of the Act. (See *Naylor v. Cantley* 96 F. (2d) 761)".

Third Question Presented.

3.

The Decision of the Circuit Court of Appeals to the Effect That Your Petitioner Is Not a "Farmer" Because of Her Poultry Business Is Clearly Erroneous.

Your petitioner believes to have sufficiently covered this point on pages 11 and 12 of the petition to which this brief refers and, for the time being, respectfully submits the question on the basis of those statements.

Fourth Question Presented.

4.

Sufficient Debts Were Shown to Justify Proceedings Under Section 75, Irrespective of the Debts of the Agricultural Pursuits of Your Petitioner and Other Joint Proprietors ("Comuneros") in the Island of Vieques.

To what has already been stated over the subject it seems in order to add that the proof of debt filed by The National City Bank of New York (R. 5) refers to a judgment recovered by said Bank against your petitioner in the sums of \$2,208.13 and \$14,520.22 with interest on said sums from May 27, 1931 and from June 3, 1931, respectively, at the rate of eight per cent per annum.

Your petitioner shall hereinafter establish that under our law regulating the subject of joint proprietorship ("Comunidad de Bienes") all the debts incurred by the agricultural enterprise in Vieques were chargeable to her personally, according to her undivided interest in said "Comunidad de Bienes" which, as shall be also shown, had lapsed prior to the filing of the petition under Section 75, as far as the *contractual* "Comunidad de Bienes" was concerned.

Fifth, Sixth and Seventh Questions Presented.

5, 6 and 7.

Your Petitioner Also Qualified as a Farmer Because the Principal Part of Her Income Was Derived from One or More of the Farming Operations Listed in Section 75 (r).

These three points being interrelated, your petitioner shall, for brevity's sake, proceed to treat them together, for which procedure she prays the indulgence of this Court.

Your petitioner being much pressed for time, she must, at least for the time being, submit these questions on the basis of the statements incorporated on pages 13 to 16, inclusive, of the petition to which this brief refers and elsewhere in this brief.

Eighth Question Presented.

8.

A Person Qualifies As a Farmer Under Section 75 (r) Irrespective of Which of the Farming Operations in Which Such Person Is Engaged Produces the Principal Part of His or Her Income.

For brevity's sake, your petitioner begs leave to reproduce at this point the statements incorporated on pages 16 and 17 of the petition to which this brief refers.

Your petitioner is satisfied that the legal proposition established in that part of the opinion transcribed on pages 16 and 17 of the petition, to the effect that even though a party qualifies as farmer, the principal part of his or her income must also originate from that particular operation and not from any other of the farming operations mentioned in Section 75 (r), will find no support in this court.

It seems in order to point out that the facts set forth in the opinion, when viewed in their true light, show that while your petitioner received \$20,000.00 from benefit payments, in 1937, (thus making her a "farmer-producer") that income accrued "on account of the 1935 sugar crop" while the \$600.00 per year income received by your petitioner from her poultry business accrued and was received during the years 1937 and 1938.

The hearing before the District Court on the Motion for Dismissal was had on December 27, 1938. In the course of that hearing your petitioner testified that she had been receiving profits of \$50.00 or \$60.00 per month from her

poultry business since about a year and a half prior to that date.

The fact that your petitioner should have been deriving her principal income from the growing of sugarcane, up to the year 1935, that her income from that source should have been terminated because of the receivership, during the year 1936 and that during the years 1937 and 1938, her principal income was derived from the production of poultry and poultry products in their unmanufactured state rather than militate against your petitioner serves to establish more firmly the ominous fact that the roots of her income have gone directly into the soil. This is specially so in view of the fact that it was not established that your petitioner received an income from any other source during those years.

As said by this Court in the *Beach* case repeatedly cited, "A farmer remains a farmer, just as a lawyer remains a lawyer, though the return of his investments, while not enough to keep him going, are larger, none the less, than the profits of his labor."

Before closing on this question, it seems in order to point out also that in the *Beach* case, while the farm debtor was held to have been occupied *principally* in producing poultry and eggs, having about 50 chickens at the time of the trial, "the reversal went upon the ground that the principal income of the debtor was derived from farming operations, if rents from the farm tenants (\$2,200) were included in the reckoning, as the court held that they should be."

In affirming the reversal, this Court said:

"The picture, however, is distorted if *Beach* is looked upon a landlord with rentals unrelated to his primary vocation. His rentals like his labor smacked of the soil, and made him not less, but more a farmer than he would have been without them."

Ninth Question Presented.

9.

Your Petitioner Qualified As a Farmer Both As Regards Her Poultry Business and Her Agricultural Pursuits in the Island of Vieques.

This question, your petitioner believes, has been sufficiently covered in previous argument.

Therefore, your petitioner shall, for the time being, submit it, on the strength of what has been hereinbefore set forth to uphold same.

Tenth Question Presented.

10.

The Circuit Court of Appeals Was Probably Wrong in Refusing to Reverse the Decision and Decree It Being that Issue Was Never Legally Joined on the Question As to Whether Your Petitioner Qualified or Not As a Farmer Under Section 75 (r).

(a) The motion for dismissal which resulted in the decree of dismissal complained of, affirmed by the appellate court, was never verified under oath, (R. 8) although the issue as to lack of verification was seasonably raised by your petitioner in her answer. (R. 11.)

(b) The issue raised by the said Motion for Dismissal, which resulted in the Decree of Dismissal complained of affirmed by the appellate court, not appearing from the record of the proceedings, such issues could not be raised through motion or petition, said procedure being altogether inadequate and contrary to law.

“Neither party has the right, however, without pleading at the proper time and in the proper way, to introduce evidence, the sole purpose of which is to make

out a case for dismissal." Hughes Fed. Prac. Jurisdiction and Procedure, Sect. 3809, p. 348.

Sullivan v. Penn. Mut. Life Ins. Co., 106 F. (2d) 560. Averments of facts in amended bill were admitted by motion to dismiss.

"The question of jurisdiction may be considered on Motion to dismiss, although a plea to the jurisdiction is a better practice."

Sitenoth v. Central Stock, 99, P. 1.

But in case of motion to dismiss the defect must appear from the record.

Walker v. Flint, 7 F. 435.

Note from Cyclopedia of Fed. Proc. section 146 p. 723, note 94—(1937 Cumulative Supp.)

Standard Stoker Co., Inc. v. Loiver et al. 46 F. (2d) 678.

"In reply to complainant's other argument that, since on a motion to dismiss, the averments of the bill must be taken as admitted, Ketchpel did not retain any interest in the alleged invention and application for patent, and therefore a decree against Lower could not affect Ketchpel, it is sufficient to point out that the effect of such motion is equivalent to that of a demurrer, and that only allegations of fact not conclusions of law are to be taken as true. Scott v. Empire Land Co. (D. C. 5 F. (2d) 873.

Amalgamated Royalty Oil Corp. v. Hemme (C. C. A.) 282 F. 750;

Consolidation Coal Co. v. Western Maryland Rwy. Co., 44 F. (2d) 595.

In re Storey, 9 F. Supp. 858.

"The question (as to 'farmer') is one of fact and can only be decided upon a hearing had either before the court or by reference to a master." (Parenthesis supplied.)

"Motion to dismiss reaches only the defects on the face of petition." Matter of Syracuse Stutz Co. Inc. (C. C. A. 2nd Cir.) 65 F. (2d) 914; Blue Valley Creamery Co. vs. Stone (C. C. A. 3rd Cir.) 80 F. (2d) 483.

Page 659. *Simkins Fed. Pract.*, 1934 Ed. "The motion to dismiss admits the allegations of the bill and is treated as a demurrer under the old rules."

(b) Such procedure, once the issue was seasonably raised, contravenes the express provisions of Section 18 (c) of the Bankruptcy Act, as seasonably alleged by your petitioner in her answer (R. 12).

"In re *Simmonson et. al.* 902 F. 905:

"The bankruptcy act certainly requires that all pleadings setting up matters of fact shall be verified under oath, and it may be assumed that the petition is a pleading, within the meaning of the act" * * *

"The defendant in such case is, at his option, entitled to have all the requirements of law and the rules conformed to. Those requirements are made for his benefit. They afford him a shield and he can, if he desires, check the progress of the proceedings by insisting upon compliance with them" * * *

"If the objection to the form of verification had been seasonably made, no doubt it would have prevailed, in which event an opportunity to secure proper verification would have been allowed" * * *

"But in case the form is not literally followed, and in case the directory provisions of the act are not literally pursued, a defendant may avail himself of the defect" * * *

Please see: *Hunt v. Fooke*, S. N. B. R. 161; Fed. Cas. No. 6896; *In re Butterfield*, 6 N. B. R. 257; and *Moore v. Harley*, 4 N. B. R. 71, Fed. Ca. No. 9, 764.

Green River Deposit Bank et al. v. Craig et al. 110 F. 137.

"The court is of opinion that the objection urged is not, in a proper sense, jurisdictional, though a failure to make the verification required by the general rules

in bankruptcy and by law might, upon the defendant's objection, result in checking the progress of the litigation until the verification was properly made." In re Simonson (D. C.) 92 Fe. 904, 1 Am. Bankr. Rep. 197.

E. H. Godshalk v. Sterling et al. (C. C. A., 3rd, 1904) 129 F. 580, 582.

"No objection seems to have been taken in the court below to the jurat, and it is too late to make such objection upon the hearing in this court upon this petition for review, even if the objection had any substantial basis. We do not see, however, that the jurat is open to objection."

This appellant respectfully submits the following fact in connection with the error urged under this point:

(a) Neither the "Petition of The Bank of Nova Scotia" nor the "Motion for Dismissal" (R. 7 *et seq.*) have been verified under oath, as required by Section 18(c) of the Bankruptcy Act. (R. 9).

Independent defenses No. 9 and 10, incorporated in this appellant's answer to said "Motion for Dismissal," read as follows in her said answer:

"9.—For a ninth and independent defense, that the allegation made by The Bank of Nova Scotia to the effect that Respondent is not a farmer is not sufficient to join issue or that jurisdictional question in view of the fact that respondent filed her original petition herein verified under oath and that same was promptly approved by the Hon. Judge of this court, while the motion to which this answer and opposition refers has not been verified under oath. (R. 11).

"10.—For a tenth and independent, defense, that the motion filed herein by said The Bank of Nova Scotia and to which this answer and opposition refers may not be passed upon by this Hon. Court, it being that same contravenes the provisions of Section 18 (c) of

the Bankruptcy Act requiring that all pleadings setting up matters of fact shall be verified under oath". (R. 12).

In addition to the foregoing in answering to the merits "without waiver of any of the defenses hereinbefore interposed, (R. 12) this appellant further alleges as follows:

"Respondent further alleges that having filed her original petition verified under oath under Section 75 (a) to (r), in which petition all the jurisdictional facts appear and said petition having been promptly approved by the Hon. Judge of this court, said The Bank of Nova Scotia may not overcome or even challenge her qualifications as a farmer through allegations couched in the precise language of the statute, particularly when the motion in which said allegations have been incorporated has not been verified under oath." (R. 14-15).

The answer heretofore referred to, in which said allegations appear, was filed since December 12, 1938 (R. 9) verified on personal knowledge and under oath (R. 17) and copy thereof was duly served on appellee herein (R. 17).

Eleventh and Twelfth Questions Presented.

11 and 12.

The Liability of Your Petitioner as a Member of the Defunct Contractual "Comunidad" Is not Secondary but Primary, there Being Nothing in the Law Which Prevents a Coproprietor or "Condomine" in a "Comunidad de Bienes" to File Under Section 75 of the Bankruptcy Act.

Civil Code of Puerto Rico (1930 Ed.):

"Section 333.—(Section 406, Civil Code of 1902, as amended by Act No. 15, 1916 page 48). Each one of the part-owners shall have the absolute ownership of his part and that of the fruits and profits belonging thereto,

and he may, therefore, sell, assign or mortgage the same, and even substitute another person in the enjoyment thereof, or lease such part, unless personal rights are involved. But the effect of the alienation or mortgage in relation to the part-owners shall be limited to the shares which may be allotted to them in the division upon the termination of the common ownership, and the effect of the lease shall be to confer on the lessee during the term of the contract, the powers of the part-owner in regard to the administration and better enjoyment of the common property.

"Section 334.—No part-owner shall be obliged to remain a part to the common ownership. Each of them may, at any time, demand the division of the thing held in common."

Since the airmail closes shortly, it is altogether impossible, for the time being, to argue this question extensively.

Thirteenth Question Presented.

13.

The Appellate Court was Probably Wrong in Refusing to Reverse that Part of the Decision and Decree of the District Court Which Requires Your Petitioner to Pay Costs Since When a Petition is Dismissed Exclusively on Jurisdictional Grounds, the Court may not Decree Costs.

"When a bill is dismissed for want of jurisdiction, the court cannot decree costs." Simkins Fed. Prac., 1934 Rev. Ed., par. 818, p. 772.

The following cases definitely confirm that rule of law:

Citizens Bank v. Cannon, 164 U. S. 324, 41 L. Ed. 453, 17 S. Ct. 89. See *Rucker v. Wheeler*, 127 U. S. 92, 93 L. Ed. 105, 8 S. Ct. 1142; *Hornthall v. The Collector* (*Hornthall v. Keary*) 9 Wall. 566, 567, 19 L. Ed. 562. See *Westfield v. North Carolina Min. Co.*, 100 C. C. A. 552, 177 Fed. 132; *Phoenix & Buttes Gold Min. Co. v. Winstead*, 226 Fed. 563.

Your petitioner respectfully prays this Court to reverse the decision and decree of the Circuit Court of Appeals relative to said appeal No. 3487 and to remand the case to the District Court of the United States for Puerto Rico, directing said District Court to set aside and vacate all legal proceedings initiated or maintained against your petitioner after she filed under Section 75 of the Bankruptcy Act and to reinstate your petitioner's farmer-debtor proceedings so that same may be continued pursuant to law and the rules for the case made and provided.

Respectfully submitted,

F. B. FORNABIE,
Counsel for Petitioner.

Ponce, P. R., May 18, 1940.

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U.S. Supreme Court, U.S.
FILED

MAR 31 1941

CHARLES H. MORE CHAPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 90

CARLOTA BENITEZ SAMPAYO,

Petitioner,

vs.

THE BANK OF NOVA SCOTIA.

**ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT.**

BRIEF FOR PETITIONER.

✓ **FERNANDO B. FORNARI,**

ELMER MCCLAIN,

Counsel for Petitioner.

FRANCISCO GARCIA PAGAN,

Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 90

CARLOTA BENITEZ SAMPAYO,

Petitioner,

vs.

THE BANK OF NOVA SCOTIA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR PETITIONER.

Official Opinions in the Case.

The first reported opinion is that of the United States Circuit Court of Appeals for the First Circuit, and is reported in 109 F. (2d) 743.

The opinion rendered on February 21, 1940, upon petition for rehearing, appears at pages 750 and 751 of the same volume. (109 F. (2d) 750.)

There is no other reported opinion.

Statement of Basis of Jurisdiction.

The jurisdiction of this Court has been invoked on the basis of the following statutory provisions:

(a) Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, which Section is also known as U. S. C. Title 28, Section 347 (a).

(b) Section 75 (n) of the Bankruptcy Act of July 1, 1898 (as amended) also known as U. S. C. Title 11, Section 203 (n), as amended by the Act of August 28, 1935, currently cited as the Frazier-Lemke Act.

(c) Section 24 (c) of the Bankruptcy Act, also known as U. S. C. Title 11, Section 47 (c), as amended by the Act of June 22, 1938, currently cited as the Chandler Act.

Preliminary Statement.

This cause comes before this Court on petition for writ of certiorari filed on May 21, 1940 and granted by this Court on Monday, October 14, 1940, to review a final decision and decree of the United States Circuit Court of Appeals for the First Circuit (R., p. 53). Said decree affirmed a Decree of Dismissal rendered by the District Court of the United States for Puerto Rico (Cooper, J.) whereby your petitioner's farmer-debtor proceedings under Section 75 of the Bankruptcy Act were dismissed with costs. (R., p. 25.)

On or about November 1, 1940 counsel for the petitioner filed a petition herein entitled "PETITION FOR INSTRUCTIONS AND FOR CERTAIN AUTHORITY." Through said petition it was aimed to have the entire question as to whether your petitioner qualified or not as a "farmer", pursuant to the provisions of Section 75 of the Bankruptcy Act, reviewed by this Court. The undersigned counsel was informed by the Clerk of this Court

through letter dated November 14, 1940, that although no formal order was entered in the matter, this Court had authorized him to advise us that the only question upon which this case should be briefed and argued before this Court is that as to whether in a proceeding under said Section 75 of the Bankruptcy Act the definition of the term "farmer" is to be determined by Section 75 (r) of the Act of July 1, 1898, as amended, or by that of Chapter I, Section 1 (17) of the Chandler Act. (52 Stat. 840.)

Statement of the Case.

The undersigned counsel would have desired to go into the entire question as to whether petitioner qualified or not as a "farmer" under Section 75, or, at least, into some of the other salient issues passed upon and decided by the United States Circuit Court of Appeals for the First Circuit, and to present to this Court a complete statement of the facts of the case. Nevertheless, in view of the instructions hereinbefore mentioned, we must abstain from furnishing such detailed statement, since, under those circumstances, we may not go further in that respect than to refer to the sole question to which review has been limited by this Court.

The pertinent portion of the Chandler Act, including a certain definition of "farmer" which the Circuit Court of Appeals below has held to apply in proceedings under Section 75, since the effective date of the said Chandler Act, reads as follows:

"Chapter I—Definitions

Section 1. Meaning of Words and Phrases.—The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

• • • • • •

(17) "Farmer" shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, **IF** the principal part of his income is derived from any one or more of such operations;" (Emphasis Supplied.) From the Act of June 22, 1938.

The definition of "Farmer" which we believe has always applied in proceedings under Section 75 of the Bankruptcy Act, since the amendment of May 15, 1935, and until the amendment of March 4, 1940 (Public Law No. 423, 76th Congress) which eliminated the obsolete reference to Section 74, is as follows:

"(r) For the purposes of this section, section 4 (b), and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, **OR** the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur." (Emphasis supplied.)

Introduction.

This case is noteworthy in that it involves much more than the rights and interests of an individual. The answer to the question as to the applicable definition of "farmer" in proceedings under Section 75 of the Bankruptcy Act, fundamentally affects a substantial portion of that all-important class for the relief of which Congress promulgated and has repeatedly amended the special emergency legisla-

tion involved, with a view of promoting economic balance, thus preserving the financial and economic structure of the Nation as a whole. We refer to "Provisions for the Relief of Debtors" initiated by Chapter VIII of the Bankruptcy Act of March 3, 1933, as amended.

As stated by this Court in *Kalb v. Feuerstein*, 308 U.S. 433, at p. 443, Congress set up in the Frazier-Lemke Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal litigation. In our humble opinion, such worthy purpose may not become an accomplished fact, until such decisions as have been recently rendered by this Court, construing the special and even extraordinary provisions of Section 75, be supplemented by a decision that shall remove present uncertainty as to the applicable definition of "farmer" in proceedings under that Section.

To us it seems rather clear that the problems of to-day cannot be solved through the application of previous theories or concepts. If such be the case, and in view of the liberal spirit pervading even as to strict bankruptcy proceedings in favor of the bankrupt, it would seem that the Frazier-Lemke Act, which we respectfully submit, is **completely integrated**, should be construed in favor of the farming industry of the country, in order to promote an adequate reflection of the existing liberal legislative intent in that respect. If the Circuit Court of Appeals was correct in its decision, it would be then necessary to arrive at the conclusion that such liberalizing policy of Congress had come to an end.

In the Beach case (*First National Bank vs. Beach*, 301 U. S. 435), decided prior to the effective date of the Chandler Act, this Court definitely held that the two branches of the definition of "farmer," in Section 75 (r) were not equivalents but, on the contrary, were used by way of con-

trast. That occasions might arise where a person might properly qualify as a farmer under either of the said two branches of the definition which, it was repeatedly stated, were not terms of art. Still, were the definition of "farmer" in Chapter I, Section 1 (17) of the Chandler Act, of June 22, 1938, to apply in proceedings under Section 75, it would inevitably follow that for a person to qualify as a "farmer" it would be necessary to qualify simultaneously under both branches of the definition.

A person engaged in the production of raw food or other material by natural processes of growth, we respectfully submit, does not cease to be a farmer because drought, pest or depressed conditions may force him to temporarily produce at a loss. Nor does it seem possible that Congress could have gone into the elaborate procedure of providing and amending a Farm Debt Moratorium Act, endowed with so many special provisions, exclusively for the benefit of relatively prosperous farmers whose principal income is derived from farming operations.

The Senate Committee on the Judiciary in its Report, No. 985, 74th Congress, 1st Session, p. 5, explaining a certain amendment to Section 75 subsequently approved on August 28, 1935, stated: "A bankrupt is a financial wreck. The question of interest and profits in bankruptcy proceedings, is never considered." (Emphasis supplied) It would, therefore, seem obvious that Congress through the enactment and repeated amendment of the particular emergency legislation involved, instead of having in mind the relatively prosperous "farmer" who received the principal part of his income from farming operations, rather aimed to reach that class which, due to the depression cycle, found itself in the throes of despair, irrespective of the fact as to whether there was or there was not any principal income, or, for that matter, any income at all. As was said by this Court in *First National Bank v. Beach*, 301 U. S. 435, at

p. 439, "The scantiness of the yield may have turned him into a bankrupt, but it did not change his occupation."

We respectfully submit that this special emergency legislation is, in its broader aspects, aimed at providing the means whereby all those involved in the production of agricultural commodities could weather hard times, either through composition or extension of time to pay their debts and, upon their inability or failure to obtain such relief, through a conditional three-year moratorium. That such was the legislative intent and that it was by no means the intention of Congress to limit the relief provided through said special emergency legislation to the man who walks behind a plow, or operates a farm through the hiring of the necessary help but who, in either case also derives the principal part of his income from farming operations, appears in bold relief from a careful investigation of the history of the particular legislation, as well as from the decisions thus far rendered by this Court and various appellate courts, interpreting said legislation.

To the foregoing it seems in order to add that Section 75 is usually referred to as "The Frazier-Lemke Farm Debt Moratorium Act," or the "Farm Mortgage Moratorium." In fact, it was under that latter title that all the hearings had before the Special Subcommittee on Bankruptcy of the Committee on the Judiciary, (75th Congress, 2d and 3rd sessions on S. 2215 and H. R. 6452) from December 1937 to January 1938, were reported.

In the opinion delivered in the Beach Case, 301 U. S. 435, at p. 438, by Mr. Justice Cardozo, that eminent jurist said: "Occasions must have been in view when the receipt of income from farming operations would make a farmer out of someone who personally or primarily was engaged in different activities."

Reference to Section 75 itself, as it stood before and after the passage of the Chandler Act, and as it now stands,

we respectfully submit, also sustains our viewpoint in that respect. As pointed out by the Circuit Court below in its opinion, Section 75 (a) (4) makes the provisions of the Frazier-Lemke Act applicable also to partnership, common, entirety, joint community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers. It is not at all difficult to visualize that in the case of any of the first four business organizations mentioned, one or more of the partners, co-tenants or co-owners, thus entitled to receive the benefits of the Act might not be farmers. Occasions may even arise when one or more of said partners, co-tenants or co-owners may have never been on a farm. Still, the Act would cover such absentee or non-cooperating partners, co-tenants or co-owners to the same extent as though they were personally engaged in farming operations or tillage of the soil. In the case of a farming corporation, that, we respectfully submit, must not be necessarily managed by a farmer, even those stockholders who are not farmers (to the extent of 25 per centum thereof) may also obtain the relief provided by the Frazier-Lemke Act.

We further respectfully submit that although such other remedial legislation as the Agricultural Adjustment Act (48 Stat. at L. 31, U. S. C. A., title 7, Sect. 601, and the Bankhead Act (48 Stat. at L. 958, chapter 687, U. S. C. A., title 7, Sect. 725) was intended to provide relief exclusively for the "farmer-producer", in the form of benefit payments, etc. (*United States v. Butler*, 297 U. S. 1 and *Butler v. United States*, C. C. A. **FIRST**, 78 F. (2d) 1, at page 12). Section 75 of the Bankruptcy Act was, on the other hand, intended to cover a much broader field by providing the necessary emergency relief to that entire class referred to in present times as "farmer-debtors", which class is none other than those combined forces of the Nation usually referred to as the agricultural debtors. (*Paradise Land &*

Livestock Co. v. Federal Land Bank of Berkeley, Cal.,
(C. C. A. 10, 1939) 108 F. (2d) 832).

That the traditional concept of farmer was intentionally eliminated by Congress through the promulgation and amendment of the definition of "farmer" of Section 75 (r), has been repeatedly held by the courts. The latest reported case that we know of, expressly sustaining that theory, is that of *In re Horner* (C. C. A., 7th, 1939) 104 F. (2d) 600, 601, which case is likewise an authority in favor of the theory which this brief aims to sustain.

In our humble opinion, the accepted concept of "farmer" since March, 1933 when Section 75 was enacted, and up to this date, was admirably expressed in the opinion rendered by the Circuit Court of Appeals for the Second Circuit in the Beach case reported in 86 F. (2d) 88. We extract the following from the Opinion rendered in that case:

"* * * But section 75(r), as amended (11 U. S. C. A., Sect. 203 (r), certainly meant to broaden the class, by contrasting those 'personally bona fide engaged' in husbandry with those who merely drew their principal income from it. It seems to us either that 'personally' must mean 'without any assistants', or that the second clause includes those who live by rents from the farm operations of tenants. We reject the first alternative; a man is no less a farmer because he hires laborers, either regularly or sporadically; he is 'personally' engaged in farming, though, being in possession, he rides his acres and superintends the manual labors of others. On the other hand it is certainly a great abuse of words to call that man a farmer, who merely lives upon the yield of farm lands; nor can we see that this is much bettered by confining the clause to leases in which the tenant pays in kind. Nevertheless, notwithstanding the violence done to ordinary usage, we cannot escape the literal meaning of the words chosen. Such a result does not, moreover, violate the probabilities as much as one might at first blush suppose. The occasion for the legisla-

tion was the collapse of farm values, following upon the depression, and indeed preceding it. There was a large class who had rented their farms to others, but who were as dependent upon the yield as though they worked the land themselves as they usually had done originally. These people were ordinarily in the same case as those who actually farmed; it is not unreasonable to ascribe to Congress an intention to succor them with the rest. * * * But when the debtor's principal income in fact comes out of the land, we find it impossible to give reasonable effect to the language used, unless we call him a farmer." (Emphasis supplied.)

The foregoing is not intended to cover any other issue in the present case. We have rather aimed to approach the situation from its general fundamental aspects. The people of this island of Puerto Rico are, perhaps, more vitally concerned with the general welfare of agriculture than any particular community in continental United States. Consequently, those who like ourselves must repeatedly come in contact with the acute conditions prevailing through the subsisting depression in farm values and in the agricultural industry as a whole, must necessarily have a genuine interest in maintaining the integrity of Section 75, as we understand it to be, until the emergency shall have come to an end.

Preliminary Considerations.

I.

THE ISSUE PERTAINING TO THE APPLICABLE DEFINITION OF "FARMER" WAS INJECTED INTO THE PROCEEDINGS BELOW BY RESPONDENT.

The following statement has been extracted from page six of the brief in opposition to the petition for certiorari filed by Respondent herein:

“ * * * Although the question was not raised by the parties, the Circuit Court, as a preliminary matter, held that the Chandler Act had amended Section 75 (r) of the Bankruptcy Act and that consequently the applicable definition of ‘farmer’ was that one given in Section 1 (17) of the Bankruptcy Act as revised by the Chandler Act.” (Emphasis supplied.)

It is quite apparent that in advancing that statement, counsel for the Respondent overlooked the following which appears under Point III, entitled “Appellant is not a farmer as defined in Section 75 of the Bankruptcy Act”, on page 32 of the brief for appellee filed in case No. 3487 before the Circuit Court of Appeals:

“This sub-section (r) was enacted in 1935 by the amendatory Act which we have discussed in Point II (b) hereinabove. (Act of August 28, 1935, c. 792, 14 Stat. 943.) Since that time Congress has passed the Amendatory Act of June 22, 1938 known as the Chandler Act (52 Stat. 840), effective by its terms September 22, 1938.

“The said Chandler Act added a new sub-section (17) to Section 1 of the Act (11 U. S. C. A. 1 (17)) which provides that, unless inconsistent with the context, the term:

“ ‘Farmer’ shall mean (1) an individual personally engaged in farming or tillage of the soil and (2) shall include an individual personally engaged in doing farming or in the production of poultry, livestock, or poultry or livestock products, in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations.’ ” (Emphasis supplied.)

Again on page 33 of the same brief, under the same point and heading, the following appears:

“We submit that the test to determine who is a ‘farmer’ under the Act may be stated as follows:

"1. Is the debtor primarily bona fide personally engaged in the farming operations? Or

"2. Is the debtor **personally engaged** in any farming operations from which he derives the principal part of his income?" (Emphasis supplied.)

To the foregoing we might add that we do not agree with certain other statements or innuendoes incorporated in said Brief in Opposition. However, the issue having been limited by this Court to the question of the applicable definition of "farmer", we have not deemed it necessary to go into those other details. On the other hand, the clarification of the situation referred to above being altogether important, we have felt in duty bound to bring such situation before this Court in its true light. It is just because the task is one of the many disagreeable ones imposed by the profession, that we have disposed of it at the outset.

II.

THE DISTRICT COURT APPARENTLY ALSO DECIDED THE ISSUE AS TO WHETHER PETITIONER HEREIN QUALIFIED OR NOT AS A "FARMER" UNDER THE ASSUMPTION THAT IT WAS THE DEFINITION OF "FARMER" IN SECTION 1 (17) OF THE CHANDLER ACT AND NOT THE DEFINITION OF SECTION 75 (r) THAT APPLIED IN PROCEEDINGS UNDER SECTION 75, AFTER THE EFFECTIVE DATE OF THE CHANDLER ACT.

The pertinent docket entry shows that upon the termination of the final hearing had before the District Court on December 27, 1938 (the District) "Court announced that order dismissing case would be signed on ground that debtor was not a farmer." (R., p. 27.)

Reference to the Findings of Fact and Conclusions of Law (R., p. 20) made pursuant to the Decree of Dismissal made and entered on January 3, 1939, further shows that after dealing with various other questions the District Court held

that "This Court as a Bankruptcy Court is without jurisdiction to entertain the debtor's petition filed herein." (R., p 25, Conclusion IV.)

It seems worthy of note that in interpreting the conclusion of law just cited, the Circuit Court of Appeals relates it to that part of its opinion in which the Circuit Court holds that assuming that petitioner herein qualified as a "farmer" because of her poultry business, she having "received \$20,000.00 as her share of benefit payments (paid) by the Department of Agriculture" (R., p. 65), she did not establish, nor did she make any effort to establish "that the principal part of her income was derived from the production of poultry." To that the Circuit Court added: "hence the District Court was not in error in its ultimate conclusion that 'This Court as a Bankruptcy Court is without jurisdiction to entertain the debtor's petition filed herein.'" (R., p. 65.)

Perhaps the best way to definitely establish our contention to the effect that the District Court apparently based its decision as to whether petitioner herein was or was not a "farmer" on the assumption that it was the definition of "farmer" of Section 1 (17) of the Chandler Act and not the definition of Section 75 (r) that applied, will be to cite some of the statements made by the Hon. Robert A. Cooper, Judge of the District Court, in the course of the final hearing, together with such other statements as are necessary to show the exact import. We shall therefore, proceed to extract and transcribe hereinbelow such statements, taken from the Court Reporter's Transcript of the evidence produced and proceedings had at the time of the final hearing on December 27, 1938, which resulted in the Decree which petitioner herein aims to have reversed. A certified copy of said "Reporter's Transcript" (to be hereinafter referred to as (R.T.) is in the possession of the Clerk of this Court:

"The Court: Now I have had a few of these cases. The way I understand the law is this, any debtor, a bona fide farmer, whose principal income is derived from farming operations and principally devotes his time to the management of a farm, that is, a farmer, such person may file a petition and submit a plan to the creditors asking the creditors to approve. If they refuse, then you have a right to file under sub-division "S", and if it is established that the petitioner is a farmer as defined by the statute you are entitled to proceed under that statute." (R. T., p. 6—Emphasis supplied).

The Court: He means what part have you taken in the farming operations? A. Well, I am a proprietor. We have a manager." (R.T., p. 10.)

"The Court: I don't see the relevancy of that. I would like to come down to the issue. I'd like to know simply the extent of this lady's farming operation, what income she receives and what she expends in the operations of the farm or farms on which" * * * (R.T., p. 21—Emphasis supplied.)

"The Court: Yes, that is not in issue. That has not a thing to do with the issue we are trying. Let us confine the testimony to the issue, and that is, let Mrs. Seix testify as to what she has received and spent and what she has had to do with the operation of these farms, for the purpose of determining the one question, is she a bona fide farmer." (R.T., pp. 13/14—Emphasis supplied.)

"The Court: Well, the agreement is in existence and if it has any relevancy it is the best evidence. Mrs. Seix may have received large sums of money as her share of the profits of farming operations; she may have received large sums of money from benefit payments; that would not make her a farmer. A farmer, according to the bankruptcy law, is a person whose principal income is derived from farming operations which the person, the farmer, manages, controls, directs. They need not actually perform labor on the farm themselves; but that must be their principal

business. She may receive nothing from it and still be a farmer. It may be a loss." (R.T., p. 15—Emphasis supplied.)

"Mr. Silva: I have been working on this evidence since this morning. It is our impression that we could not in the short time which we have been given produce all this proof. We would have to summon witnesses from Vieques, for example the manager of the sugar mill. For example, we have proof to establish that by the year 1936 the evidence and records in the possession of the receiver in equity case No. 2151, which is before this court, shows an undivided profit in excess of \$1,700,000.00, and that statement was confirmed by Mr. Miguel Vilaró, who is the acknowledged representative of the bank. We would have to summon witnesses and get documentary evidence to prove and establish that there was another fund designated as a secret reserve of the Comunidad Jose J. Benitez e Hijos amounting to about \$750,000.00 of which this debtor Carlota Benítez Sampayo has a share: **That amount represents additional income originating from her farming interest.** We would have to summon witnesses and obtain documents to show that Carlota Benitez Sampayo since 1917 and up to this date, has operated her interest in Vieques in a manner which is equivalent to her own personal operation in accordance with the law, and to prove that when this operation is taken as a whole the roots of the debtors income go directly to the soil, as a farmer. (Emphasis supplied.)

"The Court: **What has that to do with whether the petitioner is or is not a farmer? What do you understand to be a farmer, under the bankruptcy law?**

(Discussion by counsel)

"The Court: I don't think you will find any case anywhere that will sustain the proposition that a person is a farmer merely because they have an undivided interest in a farm operation. You might just as well state that a stockholder in a bank is a banker. You would not accept that. **A farmer is a person whose**

principal business is farming, AND whose principal income is derived from the farming operation. The case you quote there is all right." (R.T., pp. 36/37—Emphasis and capitals supplied.)

We respectfully submit that in view of the showing made through the statements incorporated in these preliminary considerations, there is no justification for Respondent's apparent pretensions to have the case remanded to the Circuit Court of Appeals, for further proceedings, should the decree complained of be reversed by this Court.

ARGUMENT.

Principal Question Presented.

THE DEFINITION OF "FARMER" THAT APPLIED AND STILL APPLIES IN PROCEEDINGS UNDER SECTION 75 IS THAT OF SECTION 75 (r) AND NOT THAT OF SECTION 1 (17) OF THE CHANDLER ACT.

A.

GENERAL ORDER 50 AND FORM 63 ESTABLISHED BY THIS COURT DETERMINE THAT IT IS SECTION 75 (r) THAT APPLIES ALSO AFTER THE EFFECTIVE DATE OF THE CHANDLER ACT.

As alleged by petitioner herein in paragraph (1) of her petition for rehearing, seasonably filed before the Circuit Court (omitted from printed record) the General Orders in Bankruptcy, as amended and established by this Court on January 16, 1939 (released January 27, 1939, effective February 13, 1939) include General Order 50 which applies to "Proceedings Under Section 75 of the Act." Paragraph (9) of said General Order 50, in its pertinent part, reads as follows:

"(9) * * * 'The petition shall show to the satisfaction of the district court that the decedent at the time of his death was a farmer within the meaning of subdivision (r) of Section 75' ". (Emphasis supplied.)

It was and is our contention that although that portion of paragraph (9) of General Order 50 extracted and transcribed above refers to the filing of a farmer-debtor petition by the representative of a deceased "farmer", the phrase cited is nevertheless conclusive to the extent of indicating that it is the definition of "farmer" appearing in sub-section (r) of Section 75 that applies in proceedings under said Section, also after the effective date of the Chandler Act. As already stated, said General Order 50 was established on January 16, 1939, that is, more than six months after the promulgation of the Chandler Act on June 22, 1938. We, therefore, believe that rather than having inadvertently carried over and republished old General Order L (288 U. S. 643) after a significant but unnoticed change in the law, as suggested by the Circuit Court in its opinion upon petition for rehearing (R., p. 67) this Court *advisedly* maintained unaltered the phrase cited, as well as the balance of said old General Order L, because of the fact that Section 75 was not affected by the Chandler Act, except insofar as said Section 75 was expressly amended by said Act.

General Orders in Bankruptcy have the force and effect of law. *Folda v. Zilmar* 14 F. (2d) 843; *In re Hodges* 4 F. Supp. 804; *In re Brecher* 4 F. (2d) 1001; *In re Lake Champlain Pulp & Paper Corp.* 20 F. (2d) 425; *Sherman & Son v. Corin*, 73 F. (2d) 468, 470, par. [2, 3.]

Petitioner herein further alleged in paragraph (j) of her said petition for rehearing (omitted) that through its said Order of January 16, 1939 this Court also amended and established certain forms in bankruptcy. That new Form 63, (U. S. C. A. following sec. 53) thus established and entitled "Debtor's Petition Under Section 75 of the Bankruptcy Act" follows the definition of "farmer" embodied in Section 75 (r). It was further pointed out that said Form 63 includes as one of the alternative jurisdictional requirements or qualifications the phrase "or the principal

part of whose income is derived from one or more of the foregoing operations," just as it appears in the definition of "farmer" of Section 75 (r). (Emphasis supplied.)

As is also the case with General Order 50 referred to above, we must candidly state that we cannot concur in the suggestion to the effect that the text of new Form 63 may have been also inadvertently carried over and republished through failure to appraise a significant although unnoticed change in the law. With all due respect for the view sustained in the premises by the Circuit Court, we must also in all candor state that after a thorough and painstaking investigation of all sources available and as may throw some light on the situation, we must perforce affirm ourselves in our conviction to the effect that this Court promulgated said General Order 50 and said Form 63, *advisedly* under the well grounded premise that, insofar as the definition of "farmer" in subsection (r) of Section 75 relates to proceedings under said Section, it remained altogether unaffected by the Chandler Act.

Volume 10 of the 1939 edition of Remington on Bankruptcy states the following with reference to the application of Form 63 and General Order 50 *after the effective date of the Chandler Act*:

Section 4022 page 38, 2d par.

"The form of a debtor's petition under Section 75 is prescribed by the Supreme Court* 68 and should be followed. It is provided by the Act itself (Sect. 75 (c)) and also by General Order No. 50 (2) that the petition or answer shall be accompanied by debtor's schedules.

"Section 4023. General Order 50, in its paragraphs 9 and 10, details the procedure to be followed where the personal representative of a deceased farmer desires to take advantage of Section 75." (Here follow paragraphs 9 and 10 of General Order 50)

* 68. See official form 63 as amended Jan. 10, 1939.

We admit that in the case of *Meek v. Centre County Banking Co.*, (268 U. S. 426) cited by the Circuit Court in its Opinion upon petition for rehearing (R., p. 67) this Court held that a certain General Order and a certain Form taken from previous ones were without statutory warrant, and of no effect. As stated in the Opinion of this Court in that particular case, the authority conferred by the Bankruptcy Act to prescribe necessary forms and orders as to procedure, and for carrying the act into effect, is plainly limited to provisions for the execution of the act itself, and does not authorize additions to its substantive provisions. In that case, the General Order and Form involved, were contrary to the substantive provisions of the act, in a rather fundamental aspect, due to certain amendment that had gone into effect. In the present case, however, the situation differs to quite an appreciable extent.

By the time the decision to which this brief refers was rendered, the decisions were uniform in the sense that it was the definition of "farmer" in subsection (r) of Section 75 that applied in proceedings under said Section. The legislative history of the Chandler Act and of the Frazier-Lemke Act, as well as all the information that we have been able to muster after the most painstaking and protracted research, all leads us to the same conclusion, namely, that it was not the intention of Congress to in any manner, way or form affect the definition of "farmer" applicable to proceedings under Section 75, through the promulgation of the Chandler Act, as shall be hereinafter shown.

B.

Section 1 (17) of the Chandler Act did not amend or repeal by implication Subsection (r) of Section 75, which section is completely integrated.

The phrase "repeal by implication," we respectfully submit, is commonly used because convenient, to indicate

the rule of construction by which a later repugnant provision modifies or abrogates a former one. (*People v. Sours*, 74 P. 167, 176; 31 Col. 369, 399, 102 Am. S. R. 34.) Nevertheless, it is not an amendment in the strict sense of the word. (*People v. Peete*, 202 P. 51, 67, 54 Cal. App. 333; *Hogan Milling Co. v. Junction City*, 157 P. 1174, 1175, 98 Kan. 253.)

The Circuit Court held that "the Chandler Act . . . necessarily amends Section 75 (r)" (R., p. 63) and that "the Chandler Act amendment of Section 1 (17) *by implication* repeals Section 75 (r), so far as the old definition of 'farmer' is inconsistent with the new" (R., p. 63). The two concepts of repeal by implication and amendment are therefore used indistinctly in the opinion to reach the same conclusion. In this connection it seems in order to point out that, in the instant case, repeal by implication or amendment is deduced not from the citations included in the opinion itself (which, as far as proceedings under Section 75 are concerned, are wholly and diametrically opposed to the conclusion arrived at) but rather on the assumptions that Section 75 is not completely integrated and that the definition of "farmer" in Section 75 once having been made applicable to Section 4 (b), a new definition of "farmer" which *purportedly* amends Section 4 (b), must by the same token also amend or partially repeal by implication the definition of "farmer" in sub-section (r) of Section 75 (R., p. 63).

That Section 75, added to the Act of July 1, 1898, in the form of *emergency legislation* (*Kalb v. Feuerstein*, 308 U. S. 433) is **completely integrated** (at least insofar as its composition and extension provisions are concerned) has been uniformly accepted by the courts which almost invariably refer to proceedings initiated under said Section as proceedings initiated under Section 75 (a) to (r). In fact, it is by this time quite well established that the con-

ditional moratorium proceedings provided by subsection (s) are a continuation of the proceedings under (a) to (r). Such being the case, it would seem to follow that subsection (r) is part of the context of the other subsections in which the term "farmer" appears in Section 75 and that the statute must, therefore, be construed in that light. The following authorities, we respectfully submit, uphold our viewpoints as to what has been stated under this subtitle:

The following has been extracted from the top of page 608 of Prentice-Hall Bankruptcy Service (latest edition) loose leaf dated September 22, 1938, the effective date of the Chandler Act:

"Construction.—1. Courts should construe the language of the Bankruptcy Act so as to effectuate the evident purpose of the legislation, and not so narrowly as to defeat the true intent of Congress. *Royal Indemnity Co. v. American Bond & Mortgage Co.* (1933), 288 U. S. 596, 53 S. Ct. 551, 77 L. Ed. 688, 22 Am. B. R. (N. S.) 590, aff'g (C. C. A., 7th Cir., 1932), 61 F. (2d) 875, 22 Am. B. R. (N. S.) 190."

In the case of *Howard S. Palmer et al. v. The Commonwealth of Massachusetts* decided November 6, 1939 (308 U. S. 79), it is definitely stated that, in construing legislation, this Court has disfavored inroads by implication. The following has been extracted from the opinion of the Court, delivered by Mr. Justice Frankfurter:

"* * * And so we have one of those problems in the reading of a statute wherein meaning is sought to be derived not from specific language but by fashioning a mosaic of significance out of the innuendoes of disjointed bits of a statute." (Emphasis supplied.)

We venture to remark that the doctrine of repeal by implication is not favored by the courts.

Bouvier's Law Dictionary, Third Revision, Vol. 1. West Publishing Co. 1914.—"Context. Those parts of a writing which precede and follow a phrase or passage in question; the connection.

It is a general principle of legal interpretation that a passage or phrase is not to be understood absolutely as if it stood by itself, but is to be read in the light of the context, i.e. in its connection with the general composition of the instrument. * * * In the context of a will, that which follows controls that which precedes; and the same rule has been asserted with reference to statutes. See Construction; Interpretation; Statute."

The Century Dictionary. Revised and Enlarged Edition, Vol. II, C.—"Context. Texture; specifically, the entire text or connected structure of a discourse or writing."

In the rather recent case of *Home Owners Loan Corporation v. Creed*, 108 F. (2d) 153, 154 (C. C. A. 5th), decided December 16, 1939, and cited by petitioner herein under paragraph 4 (a) of her petition for rehearing, a similar situation was presented and decided by the Court. The following has been extracted from the opinion rendered by Circuit Judge Sibley in that case:

"The Chandler Act, neither in its caption nor body, makes any express reference to the Frazier-Lemke Act, though it expressly amends, substitutes, or repeals many provisions of former bankruptcy Acts, until near the end in Sec. 2, Sub. a, 52 Stat. 939, 11 U. S. C. A. Sect. 203, note, there is a brief extension of the stay period under 75, sub. s, and an amendment as to the Conciliator's fees. In Sect. 4, 52 Stat. 940, 11 U. S. C. A. Sect. 204 the words occur; 'Section 76 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States"', approved July 1, 1898, as amended, is hereby repealed. Except to the extent necessary to give effect to the provisions of section 6 of this amendatory Act, all Acts

or parts of Acts inconsistent with any provisions of this amendatory Act are hereby repealed.' "

"It is true, as argued by appellant, that the Chandler Act, Sec. 5, sub. b, 52 Stat. 940, 11 U. S. C. A. Sect. 1 note, says, on the subject of severability, 'Sections and subdivision headings shall not be taken to govern or limit the scope of the sections or subdivisions to which they relate.' These words seem to refer to the effect of the 'headings' on the construction of sections and subdivisions. **They do not say that provisions in one Chapter may be transplanted to another Chapter. The subjects of the several Chapters are so diverse, and the provisions in each of them are so detailed, that such transfer is not generally intended. There are frequent express adoptions from other Chapters when such are intended.**" (Emphasis supplied.)

"Section 406 (6), 11 U. S. C. A. Sect. 806 (6), declared that 'debtor' shall mean a person, other than a corporation, who could become a bankrupt under Sect. 4, 11 U. S. C. A. Sect. 22. A farmer could become a voluntary bankrupt under Sect. 4. Since Chapter XII thus may include a farmer, and since an 'arrangement' is defined in Sect. 406 (1) so broadly as to include the composition of a land mortgage under the Frazier-Lemke Act, the question really is whether Chapter XII supersedes the Frazier-Lemke Act. We think it does not. The two do not so cover the same ground as to justify the conclusion that one is to affect the other. The Chandler Act is one perfecting the permanent bankruptcy Acts of the United States specially dealt with by it. **The Frazier-Lemke Act, though passed as an amendment of the Bankruptcy Act, is emergency legislation limited to a brief period, once expired and since extended.** It was not intended to relieve mortgagors in general, but only farmers who were temporarily facing a peculiar and pressing financial problem. We can readily see that Congress might desire to include all mortgagees in the relief temporarily to be afforded farmers, but might desire to except quasi public loans from the general and permanent scheme for arranging real estate

mortgages. The special plan for temporary agricultural relief ought not to be considered as overridden or superseded by the general provision, though the latter may be open also to a farmer. The rule is that special legislation is not repealed by later general legislation unless the repeal be express or the implication to that end is irresistible; the special remains in force as an exception to the general. *Washington v. Miller*, 235 U. S. 422, 35 S. Ct. 119, 59 L. Ed. 295; *Ex parte United States*, 226 U. S. 420, 33 S. Ct. 170, 57 L. Ed. 281; *Petri v. Creelman Lumber Co.*, 199 U. S. 487, 26 S. Ct. 133, 50 L. Ed. 281; *United States v. Nix*, 189 U. S. 199, 23 S. Ct. 495, 47 L. Ed. 775. That Sect. 75 was not thought by Congress to be superseded is shown by the minor amendments made in it as above stated. (Emphasis supplied.)

"We conclude that Sect. 75 is unaffected by the Chandler Act (except as it is expressly amended by it), and the judgment is affirmed." (Emphasis supplied.)

It seems in order to remark at this point that while a Circuit Court of Appeals is not usually bound to follow a decision of another circuit, it is rule in the First Circuit that the Court will do so, when question decided involves construction of a Federal statute, unless the Court should be of the opinion that the decision is clearly wrong. (*Sherman & Son v. Corin* (C. C. A. 1, 1934) 73 F. (2d) 468, 470, par. [2, 3.] Prentice-Hall Bankruptcy Service, latest edition, p. 985, Note 2.) The decision in *Home Owners Loan Corporation v. Creed*, just transcribed, was rendered on December 16, 1939, while the decision to which this brief refers was rendered on January 10, 1940. Said decision rendered in *Home Owners Loan Corporation v. Creed* on December 16, 1939 was brought to the attention of the Circuit Court of Appeals by petitioner herein through her petition for rehearing, seasonably filed (Allegation 4 (a) omitted). Said petition for rehearing was denied on February 21, 1940 (R., p. 66).

We venture to suggest at this point the following com-

ment upon the quotation from the Respondent's brief incorporated at pages 11 and 12 of this brief :

1. The words of the Chandler Act itself, (Act of June 22, 1938, Public No. 696, 75th Congress, Chapter 575, Third Session, H. R. 8046), relative to the definition of a "farmer" in Section 1 (17), quoted by respondent are:

"Section 1. MEANING OF WORDS AND PHRASES
—The words and phrases used in this Act (This is in the Chandler Act) and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

"17 'Farmer' * * *". (Then follows the definition of the word farmer.) (Emphasis supplied.)

2. Section 75 of the Bankruptcy Act (U. S. C., Title 11, Section 203) stands unaffected by the Chandler Act which names in its enacting clause and in Sections 2, 3, and 4 thereof, *precisely* what sections of the Act of July 1, 1898, are amended or repealed. Section 75, the farmer-debtor moratorium law, was neither repealed nor amended in any wise except in those respects specifically named in Section 2 (a) and (b) of the Chandler Act (52 Stat. 939). Section 2 (a) authorized an extension of the moratorium provided in Section 75 (s) (2) in certain instances to November 1, 1939, and Section 2 (b) amended Section 75 (b) relating to compensation for conciliation commissioners. Section 75 (r) which defines a "farmer" for the purposes of Section 75 was in no way changed by the Chandler Act.

In the opinion rendered in *John Hancock Mutual Life Insurance Co. v. Benno Bartels*, 308 U. S. 180, this Court, in affirming the decree of the Circuit Court of Appeals for the Fifth Circuit said:

Page 184:

"Provisions for proceedings by a farmer to obtain a composition or extension, when he is insolvent or

unable to pay his debts as they mature, are found in subsections (a) to (r) of Section 75. For that relief Bartels had presented his petition under subsection (3) and the District Court had approved the petition as properly filed." (Emphasis supplied.)

Bottom of page 184:

" * * * The plain purpose of Section 75 was to afford relief to such debtors who found themselves in economic distress however severe, by giving them the chance to seek an agreement with their creditors (subsections (a) to (r) and, failing this, to ask for the other relief afforded by subsection (s)." (Emphasis supplied)

The following further appears towards the end of the opinion rendered in said case:

Center of page 187:

"The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, while protecting the interests of his creditors by assuring the fair application of whatever property the debtor has to the payment of their claims, the priorities and liens of secured creditors being preserved. See *Wright v. Vinton Branch*, Supra; *Adair v. Bank of America Association*, 303 U. S. 350, 354-357; *Wright v. Union Central Life Insurance Co.*, 304 U. S. 502, 516, 517."

The following has been extracted from the case of *Noah Adair v. Bank of America*, decided by this Court on February 28, 1938 (303 U. S. 350):

Page 357:

"In accordance with Section 75, subsection (b), this Court, as of April 24, 1933, established Rule L, governing proceedings under Section 75, (a) to (r) inclusive, as an addition to the General Orders in Bankruptcy, 288 U. S. at 641." (Emphasis supplied)

As already pointed out at the beginning of this brief, in *Kalb v. Feuerstein et ux*, (308 U. S. 433,) decided January 2, 1940, this Court made the following statement, which, we respectfully submit, further confirms our viewpoint to the effect that Section 75 is *completely integrated*:

Page 433:

"Congress set up in the Act an **exclusive** and easily accessible statutory means for rehabilitating distressed farmers, who, as victims of a general economic depression, **were without means to engage in formal court litigation.**" (Emphasis supplied.)

In the opinion rendered by this Court in *Union Joint Stock Land Bank of Detroit v. Byerly* (310 U. S. 1) decided April 22, 1940 this Court said:

"February 11, 1935, the respondent abandoned proceedings **under subsections (a) to (r)** of Section 75 and filed an amended petition to be adjudged a bankrupt pursuant to Section 75 (s)." (Emphasis supplied)

The following has been extracted from the opinion rendered by this Court in *Borchard v. California Bank and California Trust Co.*, (310 U. S. 311) decided by this Court on May 20, 1940:

"It is to be noted that Sect. 75 contains no provision for appraisal during the course of the conciliation proceedings **covered by subsections (a) to (r).**"
* * * (Emphasis supplied)

In the opinion rendered in the case of *In re Brown*, 21 F. Supp. 935, the District Court said:

"Page 938. (4) It has been recently determined that the entire proceedings under section 75, including the composition and the proceedings under subsection (s), as amended, 11 USCA sec. 203 (s), are one

continuous proceeding, all based upon the idea of a settlement and compromise between the debtor and his creditors. * * *

The case of *Island Improvement Co. v. Holman et al.* (C. C. A. 10, 1938), 99 F. (2d) 63, confirms the theory of *In Re Brown*, just cited, besides showing the usual reference to Section 75 (a) to (r). The following has been extracted from the opinion in that case:

Page 64:

"On March 21, 1934, the Holmans filed separate petitions for debtor's relief under subsections (a) to (r) of Section 75 of the Bankruptcy Act, 11 U. S. C. A. sec. 203 (a-r). * * *" (Emphasis supplied)

Page 66:

"Subsection (s) is the only provision in the act authorizing the requirement of rental and it has no application unless and until the debtor proceeds under its terms. Proceedings under its terms are merely a continuation of proceedings previously instituted under other provisions of the section. *Bradford v. Fahey*, 4 Cir. 76 F. 2d 628." To the same effect *Cohan v. Elder* (C. C. A. 9, 1940) 112 F. (2d) 967.

The opinion rendered on June 28, 1939 in *Gray v. Union Joint Stock Land Bank* (C. C. A. 6) 105 F. (2d) 275, also shows the usual reference to section 75 (a) to (r) as follows:

Page 277. "On January 18, 1938 appellant Carl H. Gray filed his petition under Section 75 (a) to (r)." To same effect, *Paradise Land & Livestock Co. v. Federal Land Bank of Berkeley, Cal.* (C. C. A. 10th., 1939) 18 F. (2d) 832. (Emphasis supplied.)

The statement incorporated at the beginning of Chapter I of the Bankruptcy Act, as amended by the Chandler Act, to the effect that the definitions therein contained shall

apply "unless inconsistent with the context," refers, we respectfully submit, to the context of any particular Section or chapter, taken as a whole and not to the context of the individual sub-sections of any section or Chapter, as suggested by the Circuit Court (R., p. 62).

As already pointed out; one of the principal conclusions arrived at by the Circuit Court is to the effect that were subsection (r) to be considered to be part of the context of the other subsections of Section 75 in which the term "farmer" appears, it must be likewise considered part of the context of Section 4 (b) and that the latter Section having been **purportedly** amended by Chapter I, Section 1 (17), the definition of "farmer" of Section 75 (r) has been thus repealed by implication, "so far as it is inconsistent with the new." This conclusion, we respectfully submit, is altogether too disconnected from the applicable rules of construction previously established by this Court, as well as diametrically opposed to the history of the legislation involved.

It seems in order to mention that even in the case of the other debtor relief provisions which were intentionally and exhaustively dealt with through the Chandler Act, and which are now permanent legislation, construction of the statute is to be determined by the context of the particular chapter and its obvious purpose and not by taking each subsection by itself, and detaching it from the rest. (*Kunze v. Prudential Ins. Co. of America* (C. C. A. 5, 1939) 106 F. (2d) 917. It would therefore seem to follow that in the case of special emergency legislation which is **completely integrated**, as is the case with the Frazier-Lemke Act, such procedure should be followed with ever so much more particularity than in construing permanent legislation exhaustively dealt with through the Chandler Act. As stated in *Home Owners Loan Corporation v. Creed*, 108 Fed. (2d) 153, at page 154, "the rule is that special legislation

is not repealed by later general legislation, unless the repeal be express or the implication to that end irresistible," the special remaining as an exception to the general (Italics supplied).

As pointed out in paragraph (g) of the petition for rehearing seasonably filed by petitioner herein in the Circuit Court, (omitted) in the case of proceedings for the relief of debtors which were incorporated in the Bankruptcy Act through the Chandler Act in the form of **permanent legislation**, it was definitely provided that the provisions of the original Bankruptcy Act, as amended through the Chandler Act (Chapter I to VII inclusive) **insofar as they are not inconsistent or in conflict with the provisions of the particular chapter**, apply in proceedings under the said chapter and that for the purposes of such application, provisions relating to "bankrupts" shall relate also to "debtors" etc. (Chapter X, sec. 102 (11 U. S. C. sec. 502); Chapter XI, Sec. 302 (11 U. S. C. sec. 702); Chapter XII, Sec. 402 (11 U. S. C. sec. 802); Chapter XIII, Sec. 602 (11 U. S. C. sec. 1002) (Emphasis supplied).

No such provision was incorporated in the Chandler Act in connection with Section 75 of the Bankruptcy Act. Consequently, and in view of the well established rule to the effect that what includes one, excludes the rest, it follows that it was not intended by Congress to have said provisions of Chapter I to VII apply in the case of farmer-debtors who might resort to the relief made available to them by section 75 of the Bankruptcy Act. In this connection it also seems in order to point out that pursuant to the express provisions of Section 75 (n) (11 U. S. C. sec. 203 (n)) the general provisions of the Bankruptcy Act do not apply until "*the day when the farmer's petition asking to be adjudged a bankrupt*" is filed. Until that event occurs, and except as otherwise provided by the Frazier-Lemke Act, the exclusive provisions of Section 75 (a) to (r) must be followed, to the exclusion of the general provisions of the

Bankruptcy Act. This theory as to "*the line of cleavage*" was sustained by this Court in *Wright v. Union Central Life Insurance Company* (304 U. S. 502, 512). The decision just cited refers to the line of cleavage as to property, but it has been recently held that same applies also in every other respect. *In re Kovacevich* (D. C. S. D., Cal., N. D., 1940), 31 F. Supp. 566. That being the case, it is impossible to escape the inevitable conclusion to the effect that were the decision to which this brief refers to be upheld, we would then be faced with the ever so much more anomalous situation of having the definition of "farmer" in Section 75 (r) apply while the farmer debtor should be proceeding under (a) to (r) while the definition of "farmer" of Section 1 (17) of the Chandler Act would nevertheless apply upon the filing of the amended petition asking to be adjudged a bankrupt under subsection (s) (Italics supplied).

That this Court still sustains the view that Section 75 was not affected by the Chandler Act is now ever so much more apparent from the decision rendered in the case of *Wright v. Union Central Life Insurance Company*, brought for the second time before this Court and decided December 9, 1940. (No. 51, October Term, 1940.)

Footnote 1, which forms part of the Opinion rendered in that case, in citing certain amendments to Section 75, refers to the two minor ones incorporated through the Chandler Act, namely, the ones shown in 52 Stat. 939, and goes on to state that Section 75, *as it now stands*, appears in Title 11, Sec. 203 U. S. C., *which includes Section 203 (r)*. Since one of those two minor amendments is the one which amends subsection (b), it is evident that it was not intended to limit the citation to matters dealing with subsection (s). Consequently, it seems that the portion of the citation referred to is conclusive to the effect that this Court sustains the view that Section 75 was not affected by the Chandler Act, except insofar as expressly amended by it.

Another amendment cited in said footnote 1 is the Act of March 4, 1940, (No. 423, 76th Cong. 3d. Sess., c. 39), referred to on page 4 of this brief, whereby Section 75 was extended up to March 4, 1944 and reference to Section 74 omitted from the definition of "farmer" in Section 75 (r), for initiating proceedings under it. As already stated, said footnote 1 ends with these significant words: "Section 75, as now in force, appears in 11 U. S. C. § 203." (Emphasis supplied.)

That Section 203 of title 11 of the United States Code showed Section 203 subsec. (r), that is, Section 75 (r), unaffected by the Chandler Act is pointed out in the Opinion of the Circuit Court (R. 63) although with the remark that codification is only presumptive evidence of the laws. Nevertheless, now that the contents of the original of the Code that are pertinent to the issue have been cited with approval in a recent opinion of this Court, as hereinbefore set forth, we believe that we can in all frankness state that it is the opinion of this Court that the definition of "farmer" that applied and still applies in proceedings under Section 75, is the one in Section 75 (r), that is, the one in Title 11 U. S. C. Section 203, subsec. (r).

The reference to U. S. C. Sect. 203 in footnote 1, transcribed hereinabove, would besides seem to support our theory to the effect that Section 75 is completely integrated and must be treated and construed as a whole.

C.

The Definition of "Farmer" in Section 75 (r) is Still Applicable to Proceedings Under Section 4 (b) of the Bankruptcy Act.

The question of the applicable definition of "farmer" in proceedings under Section 4 (b) of the Act of July 1, 1898, as codified, amended and revised, as to certain portions

thereof, through the Chandler Act, should not normally appear in a discussion of the issue to which this brief is directed. Nevertheless, since the conclusion arrived at by the Circuit Court of Appeals as to the applicable definition of "farmer" in proceedings under Section 75, has its origin in the principal premise established to the effect that the definition of "farmer" of Section 1 (17) of the Chandler Act is applicable to proceedings under Section 4 (b), it would seem advisable to deal with this feature exhaustively, in order to pave the way towards a complete determination of the legislative intent.

It seems worthy of note that, even as early as the year 1910, that is, long before Section 75 was enacted, it had been already established that it was not intended that definitions of words used in the Bankruptcy Act which read "*shall include*" should exclude other meanings or definitions of the word, or limit the ordinary usage, as is the case with definitions which read "*shall mean*." (*In re Harper* (D. C. N. Y.) 175 F. 412, 423). The definition of farmer of Section 1 (17) includes both phrases, that is, "*shall mean*" and "*shall include*". We, therefore, respectfully submit that said definition was intended to revive the traditional concept of farmer and have it apply to Chapters XI and XII of the Bankruptcy Act and to all other situations which might present themselves in bankruptcy proceedings, while at the same time maintaining the definition of Section 75 (r) to apply in proceedings under Section 4 (b) and Section 75, as shall be hereinafter discussed in detail.

The reasons advanced by the Circuit Court of Appeals in its opinion in support of its conclusion to the effect that the definition of farmer incorporated for the first time in Chapter I of the Bankruptcy Act, through Section 1 (17) of the Chandler Act, amended the definition of "farmer" of Section 75 (r), insofar as the latter affects proceedings under Section 4 (b) of the Bankruptcy Act, are as follows:

(a) That the original definition of "farmer", (as the concept is understood to-day) was incorporated in the Act of July 1, 1898 with the debtor relief provisions added through the Act of March 3, 1933 (47 Stat., 1467, 1469 and 1473.) In this connection it is pointed out by the Circuit Court that the original definition of "farmer" of Section 75 (r) (47 Stat. 1473) was not made applicable to Section 4 (b) of the Bankruptcy Act (30 Stat. 544; 47 Stat. 47.) (R., p. 61)

(b) That the first Frazier-Lemke Act (48 Stat. 1289) added subsection (s) but made no change in the definition. (R., p. 61)

(c) That the Act of May 15, 1935 (49 Stat. 246) took pains to establish a consistent definition of "farmer" throughout the Bankruptcy Act, section 4 (b) having been amended so as to read "except a wage earner or a farmer" and Section 74 (l) so as to read "a wage earner or a farmer," while the definition of "farmer" was amended to read as it appears on page 4 of this brief. (R., p. 61)

(d) That the second Frazier-Lemke Act (49 Stat. 943) enacted a new subsection (s) but made no change in the definition of "farmer" which stood until the passage of the **Chandler Act**. (R. p. 62—Emphasis supplied.)

(e) That "for the first time, by the Chandler Act, a definition of 'farmer' was inserted in Chapter 1, Section 1 of the Bankruptcy Act, entitled 'Definitions' ", citing the pertinent portions of Chapter I, Section 1 (17), exactly as transcribed on page 4 of this brief. (R., p. 62)

(f) That Section 75 is a part of the Bankruptcy Act. That subsections (c) and (s) of Section 75 speak of the filing of a petition and an amended petition by a "farmer". That "there is nothing in the context of these subsections inconsistent with applying to the word 'farmer' the new defini-

tion in Section 1 (17)." That Section 75 (r) contains what is designated by the Circuit Court as the old definition of "farmer", but that this definition cannot be considered part of the "context" of the other subsections in which the word "farmer" is used. That were it so considered, it must equally be considered part of the "context" of the Section 4 (b) in which "farmer" appears, because by the express provisions of Section 75 (r) the definition of "farmer" there given was to apply to Sections 4 (b) and 74 as well as to Section 75. (R., p. 62)

(g) That it is clear that the new definition of "farmer" in Section 1 (17) was intended to apply to Section 4 (b) since Report No. 1409 of the House Committee on the Judiciary (75th. Cong. 1st. Sess.—July 29, 1937, p. 6) states: (R., p. 62)

"'Farmer'.—New clause (17): The amendment of May 5, (15), 1935 (11 U. S. C. Ann., sec. 203) extends the meaning of the term 'farmer' to include dairy farmers and persons engaged in the production of poultry or livestock or its products in their unmanufactured state, whose principal income is derived from any one or more of these corporations. Correspondingly, section 4 of the act is amended by substituting the phrase 'a farmer' for the language 'a person engaged chiefly in farming or the tillage of the soil.' (See 11, U. S. C. Ann., sec. 22.) Pursuant to this purpose of Congress to expand the meaning of the term it would seem advisable to formulate a new definition and to include it in section 1 as clause (17)." (R., p. 63)

(h) That the Circuit Court finds no intimation in the language of said Report No. 1409 of an intention on the part of Congress to reintroduce the awkward situation of having "farmer" mean one thing in Section 4 (b) and something else in Section 75,—“a situation which Congress had carefully eliminated by the Act of May 15, 1935, *supra*.” That

the Chandler Act in applying the new definition of "farmer" to Section 4 (b) necessarily amends Section 75 (r). That Section 4 (b) "is now governed by the **general** definition in Section 1 (17)," and "there is no longer any Section 74, which has been transposed to a later part of the Act, old section 74 (l) referred to above now appearing as section 379, 52 Stat. 913," (11 U. S. C. A. Sect. 779). (R., p. 63) (Emphasis supplied.)

(i) That the 1938 edition of the United States Code (11 U. S. C. A. sec. 203 (r)) includes "*old* Section 75 (r) as though it had been unaffected by the Chandler Act," but that "the codification is only presumptive evidence of the laws (1 U. S. C. Sec. 54 (a))" and that the Circuit Court is persuaded from a review of the legislative history that "the Chandler Act amendment of Section 1 (17) by **implication** repeals Section 75 (r), so far as the *old* definition of 'farmer' is inconsistent with *the new*." (Emphasis and italics supplied.) (R., p. 63)

(j) That Section 4 of the Chandler Act, 52 Stat. 940, contains the cautionary provision that "• • • all Acts or parts of Acts inconsistent with any provisions of the amendatory Act are hereby repealed." (R., p. 63)

(k) That the Report of the House Committee on the Judiciary, referred to in footnote 1, *supra*, (please refer to footnote 2) "contains an addendum indicating the changes in the existing law made by the Chandler Bill as it then read." That at page 144 of said Report there is this statement: "SEC. 75. AGRICULTURAL COMPOSITIONS AND EXTENSIONS. (No change.)" That this can hardly be taken literally for, as has been pointed out, Section 75 (r) "has certainly been amended to the extent that the old definition of 'farmer' therein contained is no longer to be applied to Section 4 (b)". That said phrase "No change" seems to refer not to the definition, but to

the substantive and procedural provisions dealing with relief to distressed farmers, the Circuit Court pointing out further that Section 2 of the Chandler Act, 52 Stat. 939, does specifically amend Section 75 "in certain particulars not now relevant." (R., pp. 63, 64, footnote)

(1) Whereupon the Circuit Court announced its final decision as follows:

"We take it, therefore, that the applicable definition is found in the new Section 1 (17); 'Farmer' shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, **IF** the principal part of his income is derived from any one or more of such operations." (Emphasis supplied) (R., p. 64)

Careful analysis of the various pronouncements of the Opinion of the Circuit Court of Appeals, as hereinbefore set forth, leads to the inevitable conclusion that the holding to the effect that Section 1 (17) of the Chandler Act is the one that governs in proceedings under Section 4 (b), after the effective date of the Chandler Act, is based principally upon the interpretation placed by the Circuit Court on the contents of Report No. 1409 of the House Committee on the Judiciary cited in the Opinion and extracted and transcribed in paragraph (g) hereinabove. Consequently, it seems in order to analyze and discuss said Report No. 1409 in detail, in order to try and establish its actual meaning. With that object in view, we shall first proceed to dissect said report, so as to later on show what we believe to be its true import.

It seems in order, to remark at the outset that such portions of said Report No. 1409 as have been extracted and transcribed in the Opinion, (which portions were apparently inadvertently carried over from the report submitted

to Congress by the National Bankruptcy Conference—University of Chicago Law Review (1937) 369, at pp. 376/7) are somewhat erratic or loosely worded when viewed in the light of the following self-evident facts:

(a) Said Report refers to the Act of May 5, 1935, whereas, as pointed out by the Circuit Court, reference was intended to the Act of May 15, 1935 (49 Stat. 246.) (R., p. 63.)

(b) It fails to take into consideration the all-important feature to the effect that the second branch of the definition of "farmer" referred to, as ratified through said Act of May 15, 1935, was used by way of contrast, by failing to incorporate in the language cited, the disjunctive "OR" (*First National Bank & Trust Co. v. Beach* (301 U. S. 435)). Indeed, that portion of the Report referred to, instead of showing that there are two branches to the definition, implies that there is only one, that is, that the "farmer" must be engaged in one or more of the farming operations, and, besides, his principal income must be derived therefrom.

It seems in order to state that the word "corporations" substituted for "operations," does not represent an error arising from the House Report. Such substitution appeared for the first time in the printed opinion of the Circuit Court of Appeals and was thus inadvertently carried into the official report (109 F. (2d) 743, 749.) (R., p. 63.)

(c) Said Report refers to substituting the phrase "a farmer" for the language "a person engaged chiefly in farming or the tillage of the soil." This, as set forth in the Opinion of the Circuit Court (R., p. 61) was already accomplished through the said amendment of May 15, 1935. A different interpretation would be contrary to the avowed purpose announced in the last sentence of that part of the report cited "*to expand the meaning of the term.*" (Italics supplied)

It is our opinion that said last sentence, taken in conjunction with the rest, is what actually shows the true import. Said last sentence reads "Pursuant to this purpose of Congress to expand the meaning of the term, it would seem advisable to formulate a new definition, and to include it in Section (1) as clause (17)." (Emphasis supplied.)

To us it seems quite obvious that the portion cited of the particular report, up to its last sentence transcribed in the preceding paragraph, rather than aiming to set forth what had been done in connection with the proposed additional definition of farmer (which the last sentence recommended how it might be formulated later on) simply aimed to state what had been previously done to Section 75 (r), through the said amendment of May 15, 1935, as hereinbefore shown. What seems to have actually occurred is that, as is the case with the other errors committed, the second sentence of the Report reads "Correspondingly, section 4 of the act **IS** amended," whereas it was undoubtedly meant to state that said section 4 **WAS** (had been) amended by substituting the phrase "a farmer" for the language "a person engaged chiefly in farming or the tillage of the soil." That the substitution mentioned referred to the prior elimination of the traditional concept of farmer by giving preference to the present day concept, not only follows from the language employed but also from the avowed intent, declared in the last sentence, that is, "**TO EXPAND THE MEANING OF THE TERM.**" Certainly, no such expansion could be anticipated by recommending that the opposite be brought about, namely, the substitution of the traditional concept of a farmer for the present day concept. (Emphasis supplied.)

We must respectfully insist that the portion of the Report cited, up to the last sentence, simply aimed to state the situation as it existed after the amendment of May 15, 1935. On the other hand, the last sentence cited, represented nothing else than a recommendation as to what should be done later

on in formulating **THE OTHER** definition of farmer to be incorporated as Section 1 (17) as part of the permanent provisions of the Bankruptcy Act.

Following the established practice, we shall now proceed to transcribe hereinbelow the paragraph extracted by the Circuit Court of Appeals from the particular Report, enclosing in brackets the matter that we believe to have been erroneously stated, excluded or included and in capitals or arabic numerals what we believe was intended to be set forth.

“ ‘Farmer’—New Clause (17): The amendment of May [5] 15, 1935 (11 U. S. C. Ann., Sec. 203), [extends] **EXTENDED** the meaning of the term ‘farmer’ to include dairy farmers and persons engaged in the production of poultry or livestock or its products in their unmanufactured state, **OR** whose principal income is derived from any one or more of these [corporations] **OPERATIONS**. Correspondingly, section 4 of the act [is] **WAS** amended by substituting the phrase ‘a farmer’ for the language ‘a person engaged chiefly in farming or the tillage of the soil.’ (Sec. 11 U. S. C. Ann., sec. 22.) Pursuant to this purpose of Congress to expand the meaning of the term, it would seem advisable to formulate a new definition and to include it in section 1 as clause (17).”

We shall now proceed to set forth our reasons for our belief to the effect that it was never intended to have the other definition recommended by the particular Report to be formulated later on, to apply to proceedings initiated under Section 4 (b) of the Bankruptcy Act.

As stated by the Circuit Court in its Opinion (R. 63) “there is no longer any section 74, which has been transposed to a latter part of the Act.” This situation, however, was properly taken care of through the Chandler Act, as shown hereinbelow.

The following is transcribed from 1940 Replacement Vol-

ume 3 of Federal Code Annotated, having reference to Section 74, p. 69, 13th paragraph from the top:

"Provisions similar to those of sub-division (1) are now contained in sections . . . 779 . . . 884, post."

Reference to the sections mentioned in the foregoing citation discloses that section 779 referred to is the one in Chapter XI (U. S. C. Title 11, sec. 779) which provides that "no adjudication shall be entered under this Chapter (sections 701 to 799 of this title) against a wage earner or farmer unless such person shall in writing file with the court consent to the adjudication (June 22, 1938, c. 575, sec. 1, 52 Stat. 913)." On the other hand, the other section mentioned, namely, section 884, deals with an identical provision incorporated in Chapter XII (U. S. C. Title 11, sections 801 to 926).

As pointed out by the Circuit Court in its Opinion (R., 62) the reference to Section 74 in the definition of "farmer" of Section 75 (r) had not at the time been eliminated. But, looking at the situation in retrospect, we are able to ascertain that as soon as the error was discovered, Congress proceeded to make proper amends towards that end, at the same time leaving no room for further uncertainty as to what had been the legislative intent, as far as the continued application of the definition of "farmer" in Section 75 (r) to proceedings under Section 4 (b) was concerned. We refer to Public No. 423 76th Congress [Chapter 39—3d Session] [S. 1935], approved March 4, 1940, cited by this Court in *Wright v. Union Central Life Insurance Company*, decided by this Court December 9, 1940, as hereinbefore set forth. Through said Act, Congress eliminated all reference to Section 74 because "Reference to Section 74 is confusing" and for that reason the committee recommended "that such reference be stricken out of the law." (76th Cong.

3rd Sess., House Report No. 1658, dated February 21, 1940, Committee to the Committee of the Whole House on the state of the Union, submitted by Mr. McLaughlin, from the Committee on the Judiciary.) It seems altogether significant and indeed decisive as to the issue to which this sub-title is directed, that reference to Section 4 (b) was not eliminated from the definition of "farmer" in Section 75 (r) but, on the contrary, retained. That such reference to Section 4 (b) in the definition of "farmer" of Section 75 (r) was thus retained advisedly, is established in bold relief through subsequent events which are altogether conclusive in that respect.

On June 10 (legislative day, May 28), 1940, Senator Nye, acting on behalf of Senator Frazier, presented an amended copy of Senate Document 55 (the Frazier-Lemke Act, 75th Cong. 1st Sess.) entitled "Agricultural Compositions and Extensions," which amended copy of document "was ordered reprinted with certain changes, as indicated therein (please refer to Cong. Record—Senate, for the date mentioned, temporary page 11865 under title "Agricultural Compositions and Extensions," referred therein as S. Doc. No. 205). Pursuant to that request, said Senate Document No. 55, showing the changes indicated, was reprinted. The cover of said document reads as follows:

76th Congress }
3d Session }

SENATE

{ Document
{ No. 205

AGRICULTURAL COMPOSITIONS AND EXTENSIONS

SECTION 75 OF THE BANKRUPTCY ACT AS AMENDED BY—

Public 296 of the Seventy-third Congress
Public 60 of the Seventy-fourth Congress
Public 384 of the Seventy-fourth Congress

Public 439 of the Seventy-fifth Congress
Public 696 of the Seventy-fifth Congress
Public 423 of the Seventy-sixth Congress

Title 11, Section 203, United States Code

(Reprint of Senate Document No. 55,
75th Congress)



PRESENTED BY MR. NYE
FOR MR. FRAZIER

June 10 (legislative day, May 28), 1940—Ordered to be
printed with certain corrections

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1940

Reference to said reprint, showing the Frazier-Lemke Act as it thus stood with the imprint of approval from the U. S. Senate, as late as June 10, 1940, and as it now stands, will show that the definition of "farmer" of Section 75 (r) appears as follows on pages 5 to 6 thereof:

"(r) For the purposes of this section, and section 4 (b), and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also

any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

The foregoing, we respectfully submit, definitely confirms the intent of the United States Senate as to the continued application of the definition of "farmer" in Section 75 (r) also to proceedings under Section 4 (b), **after the effective date of the Chandler Act.** It now behooves us to show that the anverse of the picture is exactly the same, by establishing that the House of Representatives, also as late as the year 1940, agreed with that viewpoint in every respect.

Report No. 1658 of the House of Representatives, 76th Congress, 3rd Session, (supra) submitted by Mr. McLaughlin from the Committee on the Judiciary on February 21, 1940, page 12 thereof, shows how S. 1935 was "amended and reported by the Judiciary Committee." The portion that is here pertinent, literally transcribed, reads as follows:

"Sec. 75, (r). For the purposes of this section [,] and section 4 (b) [, and section 74,] the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

The Senate concurred in this amendment which was carried into the Act of March 4, 1940, (Public No. 423, 76th Cong., 3d Sess., C. 39, S. 1935).

We believe to have thus far established that the other definition of farmer incorporated for the first time in the Bankruptcy Act under Chapter I, entitled "Definitions", as Section 1 (17), through the Chandler Act, was not intended to apply to proceedings under Section 4 (b) of the Bankruptcy Act. That although reference to Section 74 was temporarily retained in the definition of "farmer" in Section 75 (r), as soon as this confusing situation was discovered, such reference to Section 74 was eliminated through direct action of Congress, by means of the clarifying amendment represented by Public 423 of the Seventy-sixth Congress. We have further established that, in promulgating the Chandler Act, special pains were taken to transfer the provisions of Section 74 (1) dealing with exemption from adjudication of a wage earner or farmer, without his consent, to permanent Chapters XI and XII, to which the provisions of Section 74 (together with those of Sections 12 and 13 of the Bankruptcy Act—U. S. C. Title 11, secs. 30 and 31) were transposed and that, besides, express provision was made for the application of the provisions of Chapters I to VII of the Bankruptcy Act to the amended proceedings for the relief of Debtors converted into permanent legislation through the Chandler Act, but not to emergency legislation not affected by said Act, except insofar as it was expressly amended by it.

From what has been hereinbefore set forth, it appears that adequate relief had been afforded by Congress to distressed farmer-debtors, some time prior to the promulgation of the Chandler Act, by extending the provisions of Section 75 up to March 4, 1944 (Act of March 4, 1940—Public Law No. 423, 76th Congress) and maintaining the applicability of the definition of "farmer" in subsection

(r) of Section 75 to proceedings under said Section, as to involuntary proceedings filed against a "farmer" under Section 4 (b). Such action provided the means where a farmer debtor could not be thrown into bankruptcy except through his express consent, during the period of depression in farm values. (*Paradise Land & Live Stock Co. v. Federal Land Bank of Berkeley, Cal.* (C. C. A. 9th Cir. 1939) 108 F. (2d) 832. Even in the case of the farmer debtor consenting, he is entitled to demand that the pending liquidation in bankruptcy of his estate be converted into proceedings for the relief of debtors and upon his adjudication of bankruptcy, such adjudication be had and further proceedings be conducted pursuant to the exclusive provisions of Section 75 (s). That such is the case, is quite apparent from the alternate provision of Section 75 (c) (11 U. S. C., sec. 203 (c)) which permits the farmer-debtor to either initiate Section 75 proceedings himself, through the filing of a petition under said Section or else to convert involuntary proceedings previously commenced against him under Section 4 of the Bankruptcy Act, into Section 75 proceedings, through the mere expedient of requesting such relief upon the filing of his answer to the involuntary petition of bankruptcy.

In view of the foregoing, it seems quite obvious that Congress could have never intended to have the definition of "farmer" which would determine the farmer-debtor status, to be one in the case when proceedings are initiated by the farmer-debtor through his original petition under Section 75 and another (and at that, a more restricted one) when the farmer-debtor was actually forced to take advantage of the relief expressly provided for him by Congress, through the filing of an answer in involuntary proceedings. There, we respectfully submit, lies the wisdom of Congress (as well as the necessity) of providing a uniform definition of "farmer" that will apply irrespectively

of whether the proceedings are initiated through voluntary action or through proceedings instituted against the farmer-debtor. It is evident that, in either case, Congress intended to provide and did provide the same safeguards and identical relief, by making the definition of "farmer" in subsection (r) applicable to voluntary proceedings initiated under said Section as well as to involuntary proceedings initiated against the farmer-debtor under Section 4 (b).

Congress having thus adequately provided for the farmer-debtor's plight, throughout the duration of the emergency and for that period only (Section 75 (a) (6)) it seems only natural that it may have likewise decided to provide a general, more stringent and permanent definition of farmer, to apply to other situations in which the farmer-debtor may not become directly involved, unless he should see fit to do so. That, in effect, is the spirit of that part of the decision rendered by the Circuit Court of Appeals for the Fifth Circuit on December 16, 1939 (*Home Owners' Loan Corporation v. Creed, supra*) insofar as it relates to the situation just discussed.

D.

The Legislative History Conclusively Establishes That Congress Never Intended to Amend, Repeal or in Any Other Manner Affect the Definition of "Farmer" in Sub-Section (R) of Section 75, Insofar as it Applies to Proceedings under Said Section, Through the Promulgation of the Chandler Act.

A catalogue of the amendments to Section 75 of the Bankruptcy Act, that is, the Act of March 3, 1933, c. 204, 47 Stat. 1467, known as Public Law No. 420, 72d Congress (H. R. 14359) in chronological order, is as follows:

(a) The Act of June 7, 1934, c. 424, 48 Stat. 911, known

as Public Law No. 296, 73d Congress (H. R. 5884) gave free use of the mails to conciliation commissioners in connection with official business (sec. 6, H. R. No. 194, 73d Cong. 1st Session, p. 12); amended the first sentence of subsection (a) to read as it now stands (sec. 8) and subsection (b) so as to increase the compensation of the conciliation commissioner to \$25.00 (sec. 9).

(b) The Act of June 28, 1934, c. 869, 48 Stat. 1289, known as Public Law No. 486, 73d Congress (S. 3580) added Section 75 (s) declared unconstitutional by this Court on May 27, 1935 in *Louisville Joint Stock Land Bank v. Radford* (295 U. S. 555).

(c) The Act of May 15, 1935, c. 114, 49 Stat. 246, known as Public Law No. 60, 74th Congress (S. 1616) amended subsection (r) to read as it now stands (U. S. C. title 11, Sec. 203 (r)), with the only exception that subsequently the reference to Section 74 was eliminated through Public Law No. 423 of the 76th Congress, hereinafter listed under (g).

(d) The Act of August 28, 1935, c. 792, 49 Stat. 942, known as Public Law No. 384, 74th Congress (S. 3002) clarified Section 75 by amending subsections (b), (g), (k), (n) and (p), and rewrote subsection (s) (S. R. No. 985, 1st Sess. p. 1 *et seq.*)

(e) The Act of March 4, 1938, 52 Stat. 84, known as Public Law No. 439, 75th Congress (S. 2215) amended subsections (b) and (c) and paragraph 5 of subsection (s). (House Report No. 1833, 3d Sess.)

(f) The Act of June 22, 1938 (The Chandler Act) c. 575, 52 Stat. 840, known as Public Law No. 696, 75th Congress, 3d Session, (H. R. 8046) towards the end thereof, (52 Stat. 939) amended subsection (b) (Section 2 (b) of the Act and paragraph 2 of subsection (s)), (Section 2 (a) of the Act). Besides, Section 4 of the said Act (52 Stat. 940) repealed

Section 76 of the Bankruptcy Act, which Section 76 extended the obligation of any person secondarily liable and was applicable to proceedings under Section 75.

(g) The Act of March 4, 1940, also known as Public Law No. 423, 76th Cong., 3d Sess., c. 39 (S. 1935), referred to under paragraph (c) hereinabove, amended subsection (c) to make the relief provided by Section 75 available up to March 4, 1944 and eliminated reference to Section 74 of the Bankruptcy Act from the definition of "farmer" in Section 75 (r).

From the foregoing it appears that out of the seven amendatory acts that have dealt with Section 75 since its enactment on March 3, 1933, only two of them have dealt directly with the definition of "farmer" in Section 75 (r). Nevertheless, Section 75 has been before Congress on various other occasions, during the interval. Consequently, a study of said amendments, of the reports of the various hearings, committee reports and Congressional Record, coupled with all the information available relative to the promulgation of the Chandler Act, provides ample means to establish the true legislative intent as regards the issue to which this brief is directed. We pass on to do that now.

"When section 75 of the Bankruptcy Act was adopted in March, 1933, subsection (r) defined a farmer as follows: 'For the purpose of this section and section 74, the term "farmer" means any individual who is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such farming operations occur.' Act of March 3, 1933, c. 204, 47 Stat. 1467, 1470, 1473; 11 U. S. C. 203 (r)." (First National Bank and Trust Co. v. Beach 301 U. S. 435.)

"The definition was amplified on May 15, 1935, by the

following amendment: 'For the purposes of this section, section 4 (b), and section 74, the term "farmer" includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur.' Act of May 15, 1935, c. 114, sections 3, 49 Stat. 246; 11 U. S. C. 203 (r).' (First National Bank and Trust Co. v. Beach 301 U. S. 435.)

As stated by this Court in *First National Bank v. Beach*, just cited, "The only effect of the 1935 amendments of the statute, insofar as they have to do with the definition of a farmer, was to make it clear that farming operations include dairy farming and the production of poultry and livestock products in their unmanufactured state as well as the cultivation of the products of the soil. There had been decisions to the contrary." The intention thus manifested by Congress to maintain the definition of "farmer" in Section 75 (r) unchanged, while clarifying it and at the same time making it applicable (through the amendment just cited), also to proceedings under Section 4 (b), besides showing a desire to maintain the special concept of "farmer" and promote uniformity in the decisions, we respectfully submit, also showed the intention to provide uniform relief to farmer-debtors, in either voluntary or involuntary proceedings, as set forth in detail on pages 46 and 47 of this brief.

That the intention to maintain the special concept of "farmer" evolved in the year 1933, as long as the emergency should continue, has been firm and paramount in the minds

of our legislators and that it was never intended to amend or repeal by implication Section 75 (r) through the Chandler Act, seems quite apparent from the following facts:

(a) The Committee Reports of the House and Senate, presented to Congress at the time that the Bill which resulted in the amendatory Act of May 15, 1935 was being considered (Senate Report No. 985, 74th Cong. 1st Sess., p. 4 and House Report No. 1808, same Congress and Session, p. 5) definitely show that it was the intention of Congress to clarify and affirm the existing provisions of Section 75 (r) (11 U. S. C. Sec. 203 (r)).

(b) The provisions of the last sentence of Section 75 (s) (4) as that subsection was rewritten through the amendatory Act of August 28, 1935, c. 792 (49 Stat., 942), further expanding the concept of "farmer" so as to have it apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations, under the liberal conditions specified for the latter, and in either voluntary or involuntary proceedings (subsection (c) of Section 75) have remained unaltered up to this date.

(c) The amendatory Act of March 4, 1938 (52 Stat., 84) promulgated at the time that Congress had under consideration the Chandler Act (52 Stat., 840) was eventually framed on the basis of continuing Section 75 as *emergency legislation*. (House Report No. 1833, 75th Congress, 3d Session, submitted by Mr. Chandler. Although the amendment to subsection (c) incorporated through said Act of March 4, 1938 extended the life of Section 75 up to March 4, 1940 and dealt with the filing of a petition under said section by a "farmer", the legislative history nevertheless shows that no attempt was made to alter the definition of "farmer" of Section 75 (r).

The following, extracted from the General Statement

incorporated in said Report No. 1833 submitted by Mr. Chandler (towards the middle of page 2 thereof), seems altogether significant in establishing the intention and understanding of the author of the Bill which resulted in the Chandler Act (H. R. 6439, amended, reintroduced and reported as H. R. 8046), as regards future amendments to Section 75, particularly in view of the fact that while the said Report No. 1833 was submitted by the Hon. Walter Chandler, as late as February 18, 1938, the Chandler Act had passed the House since August 10, 1937:

"Framed and construed as emergency legislation, the House Committee on the Judiciary determined, after extensive hearings and thorough investigations, that the act, in its present form, should not be made a permanent part of the bankruptcy law; and approves S. 2215 only for the purpose of extending the statute for 2 years from March 3, 1938. During the extended term, if it appears that Section 75 *should be made permanent, appropriate changes in the law can be made.*" (Emphasis and italics supplied.)

(d) The following statements made by the Hon. Walter Chandler, extracted from the printed report of the hearings had before the Subcommittee on the Judiciary, United States Senate, Seventy-fifth Congress, Second Session, on November 23, 1937, January 19, 21, 25 and February 15, 1938, seem also quite definite in showing the absence of any intention to deal with Section 75 through the Chandler Act, although said Act, as stated therein (page one of the report) had passed the House on August 10, 1937:

Page 3:

"You will remember that in 1933 these various relief provisions were added. Those provisions related to corporate reorganizations, and were rewritten entirely and put into this new bill. So far as the original 70 sections of the Bankruptcy Act are concerned, the bill

follows the original composition, rather than writing an entirely new bill, because, after 40 years of case law on the subject, it was thought inadvisable to change the numbers of the various paragraphs and sections. As far as the original 72 sections of the act of 1898 are concerned, we took out 2 of them, which left 70, and those 70 sections were made the same as they were, so far as numbers of sections and paragraphs is concerned." (Emphasis supplied.)

Page 5:

"In addition to those original 70 sections you will remember that the former bankruptcy or moratorium act, known as the Frazier-Lemke Act, which was known as Section 75, was passed in 1933 or 1934. We did not touch that section, and it is not affected by this act." (Emphasis supplied.)

(e) The Chandler Act itself (as stated in *Home Owners' Loan Corporation v. Creed*, 108 F. (2d) 153—C. C. A., 1939) "neither in its caption or body, makes any reference to the Frazier-Lemke Act, though it expressly amends, or repeals many provisions of former bankruptcy acts," until at the last moment, when the minor amendments of Section 2 (a) and (b) and the repeal of Section 76 through Section 4 (52 Stat. 939, 940) were inserted near the end.

The foregoing seems ever so much more convincing when viewed in the light that around the same time the Hon. Walter Chandler (who, besides being the author of the Chandler Bill, is generally recognized as the member of Congress who paid the most attention to bankruptcy legislation in general and to the particular Bill of December 1937 and January 1938) was sitting as Chairman of the Special Subcommittee on Bankruptcy of the Committee on the Judiciary, throughout the hearings on S. 2215 and H. R. 6452, which Bills aimed to make Section 75 permanent legislation. Said hearings resulted in the submission of Report No. 1833 by the Hon. Walter Chandler, referred to in paragraph (c) hereinabove.

(f) It was proposed in the 76th Congress—in S. 1935—to rewrite Section 75. The only permanent result was that Section 75 was merely extended for an additional four years by amending Section 75 (c) and deleting the incongruous reference to Section 74 from Section 75 (r). Nevertheless, the Reports in the Senate and in the House contain statements of interest in this discussion. Senate Report No. 1045, 76th Congress, 1st Session, submitted by Mr. McCarran from the Committee on the Judiciary, ordered to be printed on August 1, 1939, refers to S. 1935, through which it was proposed to rewrite Section 75. The following statements appear in said Report No. 1045 (submitted more than one year after the promulgation of the Chandler Act) towards the middle of page 3 thereof:

“Subsections (g) and (h) of the bill are in place of subsections (a) to (r) inclusive, of the present section 75. These subsections are a great improvement over the provisions of the present law. They simplify the proceedings, avoid delay, and will prevent the misuse of this act by farmers who are not in need of it. There is nothing new in substance in these two sections that is not in the present law except that it abolishes two proceedings—one before adjudication and one after.” (Emphasis supplied.)

• • • • •

“Subsections (i), (j), (k), (l), and (m) of the bill are substantially the same as similar provisions in the present law. • • •”

Reference to S. 1935 referred to in said Report No. 1045 further discloses the fact that subsection (j) referred to therein as being substantially the same as similar provisions in the present law is a word by word repetition of

Section 75 (r) as it stood prior to the passage of the Act of March 4, 1940 (which eliminated the reference to Sec. 74) with the exceptions that the term "farmer-debtor" was used in place of "farmer," affirming the intent to broaden the class and a sentence was added towards the end to define the meanings of the words "Act" and "section." Besides, the first paragraph of subsection (k) referred to therein constitutes the last paragraph of Section 75 (s) (4), with the sole exception that the per centum of stock of a corporation which must be owned by actual farmers would have been reduced from 75 per cent, as it now stands, to 65 per cent, consonant with the liberalizing policy of Congress referred to in the Introduction to this brief.

(g) House Report No. 1658, 76th Congress, 3d Session, dated February 21, 1940, Committed to the Committee of the Whole House on the State of the Union and ordered printed, submitted by Mr. McLaughlin, from the Committee on the Judiciary to accompany S. 1935, is ever so much more edifying and complete.

The following has been extracted from said Report No. 1658, submitted on February 21, 1940—almost eighteen months after the promulgation of the Chandler Act:

Bottom of page 4:

"CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

I. As the bill passed the Senate and was referred to the Committee on the Judiciary: * * * (Emphasis supplied.)

Page 9, second paragraph from the top:

"[(r) For the purposes of this section, section 4 (b), and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

Bottom of Page 11:

"[(4) * * * The provisions of this Act shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers, and any such parties may join in one petition."

Middle of Page 12:

"(j) For the purposes of this section, section 4 (b), and section 74, the term 'farmer-debtor' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer-debtor; and a farmer-debtor shall be deemed a resident of any county in which such operations occur. The word 'Act' wherever it occurs in this section shall mean the General Bankruptcy Act as amended, and the word 'section' means section 75 of the Act as herein amended."

(k) *The provisions of this section shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporation where at least 65 per centum of the stock is owned by actual farmer-debtors, and any such parties may join in one petition. * * **

As shown by the extract from page four, the matter extracted from pages 9 and 11, shows the existing law, while the matter extracted from the middle of page 12, is the new matter dealing with the concept of "farmer."

Bottom of Page 12, same Report:

"II. As the bill was amended and reported by the Judiciary Committee:

SEC. 75 (c) At any time prior to March 4, [1940] 1944, a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. The petition or answer of the farmer shall be accompanied by his schedules. The petition and answer shall be filed with the court, but shall, on request of the farmer or creditor, be received by the conciliation commissioner for the county in which the farmer resides and promptly transmitted by him to the clerk of the court for filing. If any such petition is filed, an order of adjudication shall not be entered except as provided hereinafter in this section.

SEC. 75 (r) For the purposes of this section [,] and section 4 (b) [, and section 74,] the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and

includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

Said Bill, as amended, was later on passed by the House and Senate and resulted in the Act of March 4, 1940, referred to hereinabove and below.

(h) Said Act of March 4, 1940, also known as Public Law No. 423, 76th Cong., 3d Session, c. 39 (S. 1935) which amends subsection (c) of Section 75 (in which the term "farmer" appears) thus making it possible for a "farmer" to file a petition praying for relief under said Section at any time prior to March 4, 1944, simultaneously affirms the legislative intent as to the applicable definition of "farmer" in Section 75 proceedings by amending the definition of "farmer" in Section 75 (r) only to the extent of removing therefrom the confusing reference to Section 74, the provisions of which Section were eliminated from the category of emergency legislation, upon the effective date of the Chandler Act.

The Report of the Committee on the Judiciary relative to S. 1935, which resulted in the promulgation of said Act of March 4, 1940 (Report No. 1658, 76th Congress, 3d Sess.) is further cumulative towards establishing the true legislative intent which it is aimed to establish through this subtitle.

On page 4 of said Report No. 1658 of February 21, 1940, committed to the Committee of the Whole on the State of the Union and ordered to be printed, it is stated that "Section 2 (refers to said Act of March 4, 1940) is "a clarifying amendment," since "Section 74 was eliminated by the Chandler Act of 1938" and, consequently, "Reference to Section 74 (in the definition of farmer of 75 (r)) is confusing; and the committee recommends that such reference be stricken out of the law" (Parentheses and emphasis supplied.) The emphasized phrase "the law" obviously refers to Section 75 (r).

(i) As already shown, as late as June 10, 1940, Senator Nye presented to the Senate for Senator Frazier an amended copy of Senate Document No. 55 (75th Cong. 1st Sess.) entitled "Agricultural Compositions and Extensions," that is, Section 75, as it had been previously printed, but showing the amendments incorporated thereto up to that date. The Senate ordered the document "to be printed with certain changes incorporated therein." (Congressional Record of June 10 (legislative day, May 28), 1940, provisional page No. 11865, under title "Agricultural Compositions and Extensions" (S. Doc. No. 205.)

Said document, which as already stated, is Senate Document No. 205, 76th Congress, 3d Session and represents a reprint of Senate Document 55, 75th Congress, 1st Session, with the amendments up to June 10, 1940, is, we respectfully submit, categorical, and definite to the effect that it is the definition of "farmer" in subsection (r) of Section 75 that applies in proceedings under said Section.

As already shown, the document specifies on its cover all the amendments incorporated up to that date to Section 75 of the Bankruptcy Act which were at the time in full force and effect, including those of the Chandler Act, listed therein as "Public 696 of the Seventy-fifth Congress." The definition of "farmer" in Section 75 (r) appears on pages 5 and 6 of the reprint with the words "and Section 74" crossed out, in order to reflect the clarifying amendment introduced thereto by the Act of March 4, 1940, discussed in paragraph (h) hereinabove. Said amendatory Act is listed on the cover of said reprint as "Public 423 of the Seventy-sixth Congress." The cover of said reprint and Section 75 (r) as they appear in said Senate Document No. 205, have been reproduced on pages 42, 43 and 44 of this brief.

We venture to comment at this point on footnote 2 appearing in the Opinion of the Circuit Court in the report

of this case below, *Benitez v. Bank of Nova Scotia*, 109 F. (2d), 743, 750, reading as follows:

"2. The Report of the House Committee on the Judiciary, referred to in footnote 1, *supra*, contains an addendum indicating the changes in existing law made by the Chandler bill as it then read. At p. 144 of this Report there is this statement: 'SEC. 75. AGRICULTURAL COMPOSITIONS AND EXTENSIONS (No change.)' This can hardly be taken literally for, as has been pointed out, Section 75 (r) has certainly been amended to the extent that the old definition of "farmer" therein contained is no longer to be applied to Section 4 (b).

'No change' seems to refer not to the definition, but to the substantive and procedural provisions dealing with relief to distressed farmers. It may be noted further that Section 2 (a) of the Chandler Act, 52 Stat. 939, 11 U. S. C. A. Sec. 203 does specifically amend Section 75 in certain particulars not now relevant" (R., pp. 63, 64, footnote).

It is respectfully submitted that the phrase "No Change" referred to in said footnote 2 actually meant to indicate that no change had been incorporated in Section 75 by the House Committee on the Judiciary. That such is the case seems quite apparent when the situation is analyzed in the light of the following facts:

Even when the Chandler Bill (H. R. 8046) finally passed the House on August 10, 1937, the change or amendment referred to in footnote 2 cited (Section 2 (a) of the Chandler Act, 52 Stat. 939) had not been proposed. Reference to the Congressional Record showing debates and proceedings of the Senate on Friday, June 10 (legislative day Tuesday, June 7), 1938, provisional pages 11520 and 11532, Seventy-fifth Congress, Third Session, discloses that the amendment which resulted in the inclusion of said Section 2 (a) was, in fact, an amendment proposed in the Senate for the

first time to the Chandler Bill as it had passed the House.

Provisional page No. 11520 of the Congressional Record referred to above shows the adoption and inclusion of the amendment reported by the Senate Committee, which resulted in the inclusion of Section 2. Said Section 2, as shown therein, had been inserted by the Senate Committee at page 269, line 11 of the Chandler Bill as it had passed the House.

Provisional page No. 11532 shows how Senator Frazier asked and obtained unanimous consent to have the vote by which said Section 2 was agreed to, reconsidered and thereupon introduced an amendment to the committee amendment previously adopted. It was said amendment to the Committee amendment that resulted in the inclusion of Section 2 (a), as well as Section 2 (b) towards the end of the Chandler Act (52 Stat., 939).

Attention is respectfully invited to the following additional facts appearing from the Congressional Record just cited:

(a) That there is no Section 1 immediately preceding said Section 2 (a) and (b) of the Chandler Act which Section 2 follows immediately after Section 703 of Chapter XIV (Maritime Commission Liens) added in the Senate to the Chandler Bill.

(b) That once new sections 2 (a) and (b), 3 and 4 (provisional pages 11540 and 11520) had been thus added by the Senate to the Chandler Bill, said Bill was passed and sent to conference with the House.

It would therefore seem that Sections 5, 6 and 7, following said Sections 2 (a) and (b), 3 and 4 (52 Stat., 939, 940) were either added in conference or at some later date.

The following has been extracted from the House Report to which said footnote 2 in the Opinion of the Circuit Court

refers, that is, House Report No. 1409, 75th Congress, 1st Sess. (Committee on the Judiciary, July 29, 1937):

Part III, page 56:

"In compliance with paragraph 2a of Rule XIII of the Rules of the House of Representatives, **changes in existing law** made by the bill are shown as follows:

Existing law proposed to be omitted is enclosed in italics and existing law in which no change is proposed is **shown in roman.**" (Emphasis supplied.)

It seems in order to digress at this point so as to remark on the significant fact that Section 75 (r) does not appear anywhere in Chapter I, entitled "Definitions," which follows the statement just cited at page 56 et seq. of the said Report. This, we respectfully submit, further shows that it was not intended to affect the definition of "farmer" in Section 75 (r) through the other definition of farmer incorporated in Chapter I, Sec. 1 (17) of the Chandler Act. The fact that said Report No. 1409 was submitted by the Hon. Walter Chandler, makes it ever so much more significant, since this confirms Mr. Chandler's statements in the premises, hereinbefore set forth (pp. 52 and 53 of this brief).

The phrase "(No change)" placed in the last page of said Report (p. 144) after "Sec. 75, Agricultural Compositions and Extensions," we respectfully submit, may not be classed as an "addendum," as it was designated by the Circuit Court in said footnote 2 (R., p. 63).

Although in the paragraph extracted from page 56 and just transcribed above it is stated that "existing law in which no change is proposed is shown in roman," the fact is that, in addition to showing such existing law in roman, the phrase, "(No Change)", exactly as it appears alongside

of Section 75, appears also alongside of every other section of the Act of July 1, 1898 which it was not meant to amend or deal with, through the Chandler Act, irrespective of its nature of permanent or emergency legislation. (Please refer to Section 16 on page 67, Sections 30, 33 and 36 on page 73, Section 43 on page 76, Section 54 on page 81 and Section 77 (Railroad Reorganizations) on page 144 of the Report after each of which sections the same phrase ("No Change") appears.

Further reference to said Report No. 1409 will show that the first 72 Sections of the Act of July 1, 1898 were incorporated therein at pages 57 to 97 inclusive. Those 72 sections were followed by the debtor relief provisions which had at the time been incorporated as permanent legislation in the Bill, i. e., chapters X, XI, XII and XIII (pages 97 to 144, inclusive). Immediately thereafter, that is, after Sec. 686 (5) of Chapter XIII the following appears:

"Sec. 75. Agricultural Compositions and Extensions (No Change)."

"Sec. 76." (Appears enclosed in black brackets to show that it was proposed to omit it, as it was omitted) (52 Stat. 940).

"Sec. 77. Railroad Reorganizations (No Change)."

The foregoing, we respectfully submit, definitely shows that the remark following Section 75 just cited "(No Change)" rather than being a memorandum, confirms the statement made by Hon. Walter Chandler to the Subcommittee of the Committee on the Judiciary (United States Senate, Seventy-fifth Congress, Second Session) to the effect that **"We did not touch that Section (75) and it is not affected by this Act."** (Shandler Act.) (Page 52 of this brief.—Parentheses and emphasis supplied.)

E.

The Admissions Made by the Respondent are Definite in the Sense That It Is the Definition of "Farmer" in Section 75 (r) That Applies Also After the Effective Date of the Chandler Act.

In the brief in opposition filed herein, Respondent The Bank of Nova Scotia approaches the issue to which this brief is directed, in the following manner:

(a) That in case conflict, doubt and confusion may have been introduced through the decision of the Circuit Court as to the applicable definition of "farmer" in proceedings under Section 75 of the Bankruptcy Act "such conflict, doubt and confusion have now been entirely eliminated by the passage of Section 2 of the Act of Congress of March 4, 1940. (Chapter 39, Sess. Public No. 423 (S. 1935), U. S. Code Congressional Services, 1940, p. 41.)" (Brief in Opp., p. 7, first full paragraph from the top.—Emphasis supplied.)

The foregoing refers to Section 2 of the Act of March 4, 1940 discussed in paragraph (h) on page 58 of this brief, whereby reference to Section 74 was eliminated from the definition of "farmer" in Section 75 (r). We respectfully submit that such statement constitutes a definite admission on the part of the Respondent to the effect that it is the definition of Section 75 (r) that applies in proceedings initiated under the Frazier-Lemke Act. (Section 75 of the Bankruptcy Act—11 U. S. C. Sec. 203.)

(b) That "If the Chandler Act did amend Section 75 (r) insofar as inconsistent with Section 1 (17) of the Revised Act, as held by the Circuit Court below, then the reenactment of the old Section 75 (r) by Section 2 of the amendatory Act of March 4, 1940, clearly had the effect of abrogating the such amendment resulting from the Chandler

Act, of reinstating the old definition of the term 'farmer' and of making it applicable to Section 4 (b) and 75 alike" and that such "was undoubtedly the intention of Congress upon passing the Act of March 4, 1940." That "There could have been no other substantial reason or necessity for amending Section 75 (r)." That "Such amendment was not necessary to extend until March 4, 1944, the time during which petitions may be filed by farmers under Section 75 of the Bankruptcy Act, the avowed purpose of the Act of March 4, 1940, nor was the exclusion from Section 75 (r) of reference to 'Section 74' of importance since Section 74 had already been entirely eliminated by the Chandler Act." That while eminent counsel for the Respondent "thinks that the decision of the Circuit Court below is entirely correct" even though it be assumed that it was erroneous, "there is certainly no necessity now for a review, nor to settle a doubtful question of Federal Law of public importance, for that has been done by the Act of Congress of March 4, 1940." (Brief in Opp., pp. 7 and 8—Emphasis supplied.)

From the foregoing it appears that after admitting that the definition of subsection (r) in Section 75 is the one that applies in proceedings under said Section, the Respondent went far afield with suggestions and conclusions which are not maintainable under the circumstances of this case. Through said suggestions the Respondent apparently aims to stretch the theory of repeal by implication to include also reenactment by implication—a dual conflicting theory which, we respectfully submit, may not find judicial support, particularly under the circumstances of this case. Once it is assumed that a later repugnant provision modified or abrogated a previous one, it may not be subsequently assumed that the previous one was repugnant to the later one without restoring the "*status quo ante*," thus admitting that no repugnancy did, in fact, exist.

The usual practice followed by Congress is to enact or repeal legislation through direct action and not by implication. It is possible that extraordinary circumstances may arise which might justify an inference of repeal by implication. Nevertheless, whenever such situation may actually come up and Congress may desire to correct it, such latter action would certainly be taken through the promulgation of adequate legislation—not through counter-implication. To attribute such desire to Congress, however, under the circumstances of this case, it would not only be necessary to completely ignore such usual procedure, but also the legislative history which is pertinent to the situation, as well as the avowed purpose expressly manifested upon the promulgation of the legislation concerned.

As already shown in paragraph (h) appearing on page 70 of this brief, Report No. 1658 of the House of Representatives, 76th Congress, 3d Session, February 21, 1940, Committed to the Committee of the Whole House on the state of the Union and ordered to be printed, definitely shows the true and only intent in promulgating the amendment to which Section 2 of S. 1935 was directed. The pertinent portion of the said Report, which is so clear as to admit of no other interpretation, reads as follows:

Page 4, somewhat below center of page:

"Section (2) is a clarifying amendment. Section 74 of the Bankruptcy Act was eliminated by the Chandler Act of 1938, and its provisions are now included in Chapter XI of that act. Reference to section 74 is confusing, and the committee recommends that such reference be stricken out of the law." (Emphasis supplied.)

In citing in italics the title of the Act of March 4, 1940 (pages 7 and 8 of the Brief in Opposition) eminent counsel for the Respondent overlooked the ominous fact that Sec-

tion 75 (r) could not have been *reenacted*, as alleged in the last paragraph appearing on page 7 of the "Brief in Opposition to Petition," without referring to such reenactment in the title.

It is respectfully submitted that since the elimination of the reference to Section 74 represented only a *clarifying amendment*, it was not deemed necessary to include reference to such clarification in the amended title of the Act. That such omission was made advisedly appears from the statement incorporated at the bottom of page 1 of said House Report No. 1658, just cited, through which statement it is suggested that the title be amended to read as it subsequently appeared in said Act of March 4, 1940. Such recommendation is followed by the one extracted and transcribed above.

It is also possible that in citing in italics the title of the Act of March 4, 1940, it may have been intended to suggest that failure to incorporate reference to the clarifying amendment of Section 2 thereof in said title, renders the said amendment void. In this connection suffice it to state that we are not here concerned with the applicable definition of "farmer" in proceedings under Section 74, nor has such issue ever been injected into the proceedings to which this brief refers. The sole issue to which this brief is directed, pursuant to the instructions received through the Clerk of this Court, is as to whether in a proceeding under Section 75 of the Bankruptcy Act, the definition of the term "farmer" is to be determined by Section 75 (r) of that Act or by Section 1 (17) of the Chandler Act.

We respectfully submit that irrespective of whether the clarifying amendment incorporated in Section 75 (r) through Section (2) of the Act of March 4, 1940 is valid or void, the specific conclusions announced by the Circuit Court of Appeals, the admissions made by the Respondent, the legislative intent, ratified in the course of the promulgation

of said amendment of March 4, 1940 and the showing made through this brief in various other important aspects, all point to the same inevitable conclusion, namely, that the definition of "farmer" in subsection (r) of Section 75 is the one that applies in proceedings under said Section, since the promulgation of the Act of May 15, 1935, 49 Stat. 246, said definition not having been amended, repealed by implication or in any other manner, way or form, affected by the Chandler Act, or through any other Act, other than through the clarifying amendment of Section 2 of the Act of March 4, 1940 referred to above.

Conclusions.

It is respectfully submitted that on the strength of the showing made through this brief, the decree of affirmance complained of should be reversed, with costs, and the cause remanded directly to the District Court.

The decision of the Circuit Court of Appeals pertaining to the sole question to which brief and argument was limited by this Court, namely, whether in a proceeding under Section 75 of the Bankruptcy Act, the definition of the term "farmer" is to be determined by the definition of subsection (r) of said Section 75 (11 U. S. C. 203) (r) or by the definition of Chapter I, Section 1 (17) of the Chandler Act, (52 Stat. 840) was based exclusively on the theory of amendment or repeal *by implication*. (Please refer to paragraphs (h) and (i) appearing on pages 35 and 36 of this brief.) Such being the case, when the situation is viewed in retrospect, and, in particular, in the light of events which took place after the decision complained of was rendered, it seems inevitable to conclude that Congress has definitely manifested its legislative intent in that respect, in a manner which is diametrically opposed to the one attributed to it by the Circuit Court. We refer principally to the matter incorporated under sub-titles C and D, appearing

on page 32 et seq. and page 47 et seq., respectively, in this brief.

In view of the limitation referred to at the beginning of the paragraph immediately preceding, we could not enter into the discussion of other questions raised through the petition for writ of certiorari filed herein. We, therefore, respectfully submit that said issue as to the applicable definition of "farmer" having been raised in the Circuit Court of Appeals by the Respondent, as shown in part I of the Preliminary Considerations, appearing on page 10 et seq. of this brief and the District Court having evidently decided the issue under the same premise (please refer to part II of the Preliminary Considerations, appearing on page 12 et seq. of this brief) we believe that petitioner herein is entitled to have the cause remanded directly to the District Court, with directions to reinstate your petitioner's farmer debtor proceedings and to set aside, vacate and hold for naught all proceedings of the nature of the ones listed in subsections (o) and (p) of Section 75, (11 U. S. C., Sects. 203 (o) and (p) instituted or maintained against your petitioner or her property after the filing of her petition under said Section and up to this date—an issue which was seasonably raised by your petitioner in this Court, as well as in the Circuit Court of Appeals and in the District Court.

Reference to the second paragraph of that portion of the opinion pertaining to appeal No. 3487 before the Circuit Court, (R., p. 59) which is the appeal to which this brief refers, will show that the Circuit Court dwelt upon the issue of the mandatory and self-executing stay raised by petitioner herein, stating that your petitioner's farmer-debtor petition was filed "*one hour before the foreclosure sale.*" That is precisely the sale which resulted in the foreclosure of the collateral security involved and served as a basis for the foreclosure proceedings subsequently instituted and

which eventually deprived petitioner herein of all her property and assets, under conditions which this Court has since decided to render such proceedings null and void and contrary to law. (*Kalb v. Feuerstein*, 308 U. S. 443.)

In addition to the foregoing careful consideration of the said opinion will disclose that the Circuit Court decided various other questions presented, and in connection with some of which the issue as to the applicable definition of "farmer" was either immaterial or else was not involved at all. Amongst the questions thus decided and, besides, reversed, was that pertaining to the issue of technical lack of good faith (R., p. 60, last full paragraph) which reversal went on the ground of the decision previously rendered by this Court in the Bartels case. (*John Hancock Mutual Life Insurance Company v. Benno Bartels*—308 U. S. 180.) We respectfully submit that on the strength of that prejudicial error thus reversed and the facts set forth in this brief, the decree appealed from should have been reversed by the Circuit Court of Appeals.

We respectfully pray this Court to reverse the decision and decree of the United States Circuit Court of Appeals for the First Circuit holding that your petitioner did not qualify as a "farmer" pursuant to statute and that the cause be remanded directly from this Court to the District Court of the United States for Puerto Rico, directing said District Court to reinstate your petitioner's farmer-debtor proceedings and to set aside, vacate and hold for naught all proceedings of the nature listed in subsections (o) and (p) of Section 75 of the Bankruptcy Act, instituted or maintained against your petitioner or her property, in violation of the mandatory, self-executing provisions of said subsections (o) and (p), after the filing of her petition under said Section 75, together with any other and further relief which to this Court may seem equitable in the prem-

ises, with costs in this Court, in said Circuit Court of Appeals and in said District Court.

Respectfully submitted,

FERNANDO B. FORNARI, (Ponce, P. R.).

ELMER McCLAIN, (Lima, Ohio),

Counsel for Petitioner.

FRANCISCO CAPO PAGAN, (Ponce, P. R.),

As of Counsel.

Ponce, Puerto Rico, March 15, 1941.

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CHARLES ELMORE CROPLEY

CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 90

CARLOTA BENITEZ SAMPAYO,

Petitioner,

vs.

THE BANK OF NOVA SCOTIA.

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT.**

REPLY BRIEF FOR PETITIONER,

FERNANDO B. FORNARIS,

ELMER MCCLAIN,

Counsel for Petitioner.

FRANCISCO CAPO PAGAN,
Of Counsel.

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REPLY BRIEF FOR PETITIONER,

**Reasons on Which the Discretion of This Court is Invoked
to Permit the Filing of This Reply Brief.**

As stated in the final brief for petitioner herein, which the present one aims to supplement, in his letter dated November 14, 1940, the Clerk of this Court notified the undersigned local counsel that the question on which this case should be briefed and argued in this Court is "whether in a proceeding under Section 75 of the Bankruptcy Act the definition of the term 'farmer' is to be determined by Sec-

tion 75 (r) of that Act or by Section 1 (17) of the Chandler Act."

The existence of such limitation is acknowledged by present counsel for the respondent in his final brief. A printed copy of said final brief not having as yet been furnished to the undersigned local counsel, it is impossible to resort to page references. The acknowledgment of the existence of such limitation by present counsel for the respondent appears under Footnote 3 incorporated towards the beginning of respondent's said final brief.

On November 18, 1940, the undersigned local counsel addressed himself to the Clerk of this Court inquiring as to whether his understanding to the effect that the limitation referred to above precluded the raising of even jurisdictional questions.

In his letter dated November 23, 1940, in replying to that question, the Clerk of this Court stated: "If there are questions of jurisdiction in the case, I do not think that you should construe the court's instruction as precluding a consideration thereof for such questions are always open. I might suggest that you confine your main brief to the question which the court indicated should be discussed and if the respondent raises additional questions you will have an opportunity to present argument thereto in a reply brief."

The undersigned local counsel has just received a type-written copy of the brief filed herein by present counsel for the respondent. In said final brief not only are raised questions other than the one to which briefing and argument was expressly limited by this Court but, besides, certain procedure is resorted to whereby various other questions are brought before this Court, without facts being set forth exactly as they are.

The undersigned local counsel verily believes that the procedure thus resorted to by present counsel for the respondent

ent and to be hereinafter explained in detail, represents such an attempt to deviate from the instructions referred to above, as to justify a prayer to the effect that the final brief filed by present counsel for the respondent be stricken from the record. Nevertheless, rather than resorting to that extreme procedure, it would seem preferable to try and correct the situation thus created, through the filing of this reply brief.

It seems in order to digress here to point out that the repeated references resorted to above to "present" counsel for the respondent originates from the fact that while in the brief filed herein on behalf of the respondent in opposition to the granting of the writ of certiorari, J. Henri Brown, Esq., senior partner of the law firm of Brown, Gonzalez and Newsom, appeared as counsel for the respondent, in the typewritten copy of the final brief for respondent furnished to the undersigned local counsel, Mr. Brown—an attorney duly authorized to practice before this Court—appears simply as "Of Counsel", while Walter L. Newsom, Jr., Esq., appears as the present counsel for the respondent. No official notice reflecting such change has ever been served on the undersigned local counsel.

The questions which the undersigned local counsel believes should not have been included in the final brief for the respondent, taken in the order in which they appear in the typewritten copy of said brief, which, as already stated, is the only one thus far furnished to undersigned local counsel, are as follows:

(a) *Fourth paragraph.* That petitioner herein "*based her claim to be a 'farmer' on (1) the fact that at her home in the city of Ponce, Puerto Rico, where she lives with her husband, she had been for the past year and a half (i. e. from approximately April 22, 1937) (1) engaged in a small way in raising and selling poultry and eggs from which she derived a profit of about \$50.00 per month (R. 21, 59);*

and (2) on the additional fact that she owned an interest in a large enterprise situated in the island of Vieques devoted to the production of cane sugar and molasses from sugar cane *grown by it and independent farmers (colonos) financed by the enterprise* (R. 21, 22, 59). Her interest consisted of a *one-twelfth share* in the *contractual Comunidad José J. Benítez e Hijos* which had large holdings of land in Vieques, cattle buildings and agricultural equipment and owned and held the capital stock of the *Benítez Sugar Company, a corporation*. The corporation and "Comunidad" for many years had been conducted 'as a single and integrated enterprise' " (R. 21, 22, 53, 54). (Emphasis or Italics has been resorted to in order to indicate the portions objected to.)

We respectfully submit to this Court that the portions extracted and transcribed under (a) hereinabove are altogether disconnected from the only issue to which briefing and argument was expressly limited by this Court.

We took issue with most if not all of those matters that counsel for the respondent now pretends to set forth as absolute facts, through the petition for rehearing seasonably filed before the Circuit Court of Appeals. Said petition for rehearing was certified to this Court but was omitted from the printed record.

In addition to having instructed us not to deal with those features, most, if not all of which, were presented through the petition for writ of certiorari filed herein, we now have that the majority of those portions of the record which must be referred to, in order to sustain our contentions in the premises, were eliminated from the printed record, upon designation as to contents thereof filed by the respondent, (to which petitioner herein objected) through order of this Court.

To the foregoing it seems in order to add that the issue as to whether a "Comunidad de Bienes", as defined by the

Civil Code of Puerto Rico, is or is not a partnership, (covered by footnote 2 appearing in said final brief) has also been injected, in utter disregard of the instructions hereinbefore referred to. Although the case cited in said footnote 2 is entitled *Benítez v. Bank of Nova Scotia*, petitioner herein *was not a party thereto*. On the contrary, the decision thus cited was rendered in connection with an appeal with which petitioner herein was not at all concerned.

(b) Undersigned local counsel further takes exception to the statement advanced by counsel for the respondent to the effect that the Circuit Court of Appeals "expressly refrained from deciding whether petitioner would have qualified as a 'farmer' as that term was (1) defined in Section 75(r) of the Act." (Question mark ours.)

Reference to the decision itself (R. 59, *et seq.*) will show that the Circuit Court of Appeals did enter into various other questions, which questions were either entirely disconnected from the question as to the applicable definition of "farmer" or else were equally applicable under either of the two definitions. In this connection it is altogether significant to note the view expressed in that respect by the Circuit Court itself in said case entitled *Benítez v. Bank of Nova Scotia*, (C. C. A. 1st) cited in said footnote 2 (110 F. (2) 169). In the course of the opinion rendered in that case, the Circuit Court of Appeals said:

"See *Carlota Benítez Sampayo v. Bank of Nova Scotia* (C. C. A. 1st Cir.) 42 Am. B. R. (N. S.) 267, 109 F. (2d) 743, decided by us January 10, 1940. In that case we did not find it necessary to pass on the question, because THE ONLY MATTER FOR DECISION ON THAT APPEAL WAS THE CORRECTNESS OF A DECREE BELOW DISMISSING THE INDIVIDUAL PETITION UNDER SECTION 75 ON THE GROUND THAT DEBTOR WAS NOT A 'FARMER' WITHIN THE MEANING OF THE ACT." (Capitals supplied.)

Reference to the opinion rendered by the Circuit Court of Appeals upon petition for rehearing (R. 68) will develop the ominous fact that the Circuit Court of Appeals felt that everything pertaining to the issue as to "farmer" had been decided under either of the two definitions. Were it not so, the Circuit Court would have hardly resorted to citing in its said opinion upon petition for rehearing the extreme case of *Shyvers v. The Security First National Bank*, 108 F. (2d) 611, which case had been decided by the Circuit Court of Appeals for the Ninth Circuit as late as December 21, 1939. The statement made by the Circuit Court (R. 68) at the time, to the effect that if the opinion rendered in that extreme case (dealing with an absentee landlord who did nothing but collect rentals while living in England) is correct, then petitioner herein "would seem not to be a 'farmer' EVEN UNDER THE DEFINITION OF SECTION SEVENTY-FIVE (R)", seems quite definite in establishing the opinion of the Circuit Court of Appeals to the effect that petitioner herein qualified as a farmer under Section 75(r) unless the decision in that extreme case could be applied to the altogether different facts in the present case. (Capitals supplied.)

Another explanation of the position assumed by the Circuit Court of Appeals might be found in the fact that the District Court having decided the issue as to jurisdiction on the premise that it was the other definition of farmer in Section 1 (17) that applied, said Appellate Court must adhere to the theory on which the case was tried and decided in the District Court. (*Valley Shoe Corporation v. Stout* (C. C. A. Mo., 1938) 98 F. (2d) 514.)

(c) Undersigned local counsel further objects to the statement appearing under footnote 4 of said typewritten brief in which it is stated that "a further reason for limiting the question to one of interpretation no doubt is the fact that the complete record below was not filed in this Court."

Eminent counsel for the respondent certainly may not take advantage of his own act in promoting the diminution of the record to be printed, as he now pretends. The complete record, as required to pass on all the questions raised in the District Court and in the Circuit Court of Appeals (other than those pertaining to the correction of the record, raised exclusively by petitioner herein) has not been printed, because of the objections raised by counsel for the respondent, but the certified copy of such record is nevertheless before this Court and may be referred to, should this Court decide to do so.

(d) The undersigned local counsel strongly objects to the incorporation of a considerable portion of the brief filed by counsel for the Respondent in the Circuit Court of Appeals, in the form of an appendix, under the pretence that inclusion of such irrelevant matter is necessary in order to establish that we did not cite correctly from said brief in the final brief for petitioner. Even casual examination of the additional matter thus included in the said appendix will prove that it does not affect either one way or another the citations resorted to by us from said brief on appeal and which are repeated therein.

Our objection is not based principally upon the general principle involved, but primarily upon the damaging fact that some of the statements thus injected into the final brief for the Respondent are contrary to the facts of the case.

In the final brief for petitioner filed by us some time ago, the following statement appears towards the end of Part I of the Preliminary Considerations:

"To the foregoing we might add that we do not agree with certain other statements or innuendoes incorporated in said Brief in Opposition. However, the issue having been limited by this Court to the question of the applicable definition of 'farmer', we have not

deemed it necessary to go into those other details. On the other hand, the clarification of the situation referred to above being altogether important, we have felt in duty bound to bring such situation before this Court in its true light. It is just because the task is one of the many disagreeable ones imposed by the profession, that we have disposed of it at the outset."

Now that counsel for the Respondent has incorporated in the said appendix some of the statements and innuendoes referred to above, undersigned local counsel feels once more in duty bound to clarify and even challenge such statements as do not reflect a true and correct expression of the facts, as they actually exist.

In the typewritten copy of the brief which, as already stated, is the only copy thus far received by the undersigned local counsel of Respondent's final brief, it is stated that counsel for the Respondent did not know that the "transcript of the testimony", formed part of the record herein and that eminent counsel has not seen the copy thereof filed herein.

As much as we regret to have to state it, we must, nevertheless state that counsel for the Respondent was seasonably informed through our brief that what we filed herein is a CERTIFIED COPY of the Court Reporter's Transcript of the evidence produced and proceedings had at the time of the final hearing had before the District Court on December 27, 1938 and which resulted in the decree which petitioner herein aims to have reversed.

Said Reporter's Transcript was obtained from the Clerk of the Circuit Court of Appeals and mailed to the Clerk of this Court, on the strength of the authority granted through the letter which said Clerk addressed to the

undersigned local counsel on November 14, 1940, from which letter we extract the following:

"In view of this limitation you may determine whether or not the 'Reporter's Transcript' referred to on page 8 of your Petition for Instructions becomes material and if so you may make it available for the inspection of the Court should the Justices determine that it is properly before them."

True and exact copy of said Petition for Instructions in which leave to file said "Reporter's Transcript" was requested, was, of course, served on counsel for the Respondent, in due course, as shown therein. On the other hand, the second paragraph of the letter of the Clerk of this Court from which we have just transcribed, follows the paragraph from that same letter cited "haec verba" by present counsel for the Respondent under footnote 3 appearing towards the beginning of the carbon copy of Respondent's final brief. Evidently, counsel for the Respondent overlooked these important features which would have given him the necessary information which he is apparently lacking as to the status of said "Reporter's Transcript" and the authenticity of same.

We shall now proceed to establish through said "Reporter's Transcript", (to be designated in citing simply as (R.T.) how some of the allegations incorporated in said appendix, fail to conform with the facts, as they actually are:

Following the same procedure hereinbefore established, it being that, as already stated, it is impossible to resort to page references, we shall proceed to discuss such statements as are contrary to the facts of the case, in the order that they appear in the appendix, beginning with paragraph B, entitled, "Appellant's Poultry Business."

Towards the beginning of said paragraph it is stated that petitioner's poultry operations "are not a matter

of basic and prime importance to her." That petitioner stated that she is not a business woman but had a finishing school education.

The record shows the following in connection with these remarks:

"Q. Now then, when did you start this poultry business, Mrs. Seix?

A. I have had it for over two or three years.

Q. How did you start this business?

A. I started it because I liked it and then it turned out to be a good business and I decided to carry it on as a business, on a business basis." (R.T., p. 16.)

"Q. And how many pigeons do you have now?

A. I have over two hundred.

The Court: Do you sell your pigeons?

A. Yes, sir, I sell pigeons, and I sell squabs.

Q. And I suppose you sell eggs?

A. I sell eggs and I sell chickens.

Q. And what is your annual income from that business?

A. I only carry notes. At the end of the month I know what I got. I never thought of it as annual. I get about fifty or sixty dollars monthly, all together, as profits.

Q. How long have you been making profits of fifty or sixty dollars a month, Mrs. Seix?

A. About a year and a half.

Q. That comes to approximately \$600.00 a year?

The Court: That is a matter of mathematics. Fifty dollars a month, six hundred dollars a year.

Q. Now, do you operate this business, yourself?

A. Yes, I do, personally.

Q. Where did you learn the business, Mrs. Seix?

A. I don't know. I used to get books from the States and I follow what the rules say, and what I ought to do, and I think I am pretty good at it, and I like it and enjoy it." (R.T., pp. 17, 18.)

"Witness: Some of those questions I really do not understand, because they are complicated. I didn't have a business education. I had a finishing school education." (R.T., p. 23.)

In the following paragraph it is remarked that by the time of the hearing petitioner's stock of poultry increased to the extent of more than 100%, "although the record shows no amendment of her schedules." The record certified to this Court does show that petitioner herein seasonably prayed the District Court for leave to file amended Schedules and that such leave was denied.

In the following paragraph it is stated that the record fails to show that petitioner herein "devoted any substantial part of her time or energies to her poultry." The following is to the contrary:

"Q. Can you tell the court more or less how many chickens have you bought and sold during that period of time?

A. I could not tell exactly because I sell most every day.

Mr. Newsom: I think that is irrelevant, your Honor.
The Court: Well, it shows the method of operation.

A. (Continued) I would have a larger flock if I didn't sell chickens as I do most every day, and I also sell squabs every day, or most every day." (R.T., p. 21.)

In the following paragraph it is stated that obviously she does not derive her principal income from her poultry. Then under direct quotation marks: "She gets about \$50 or \$60 monthly altogether as profits," she says. But her husband gives her over \$200.00 per month to cover house (without a comma) service and and everything; "she gets whatever she wants from him and whenever she needs money she gets it from him."

The following are the facts:

"Q. What is your husband's occupation, Mrs. Seix?

Mr. Silva: I object to that, your Honor.

The Court: I think it might be relevant. Proceed.

A. Well, he is a business man. I don't know.

Q. I mean what particular business has he been engaged in in the past year?

A. I know nothing of his business.

Q. Do you know how much his annual income is?

A. I don't know. I get what I want. That's all.

Q. And how much do you receive from him a year?

Mr. Silva: May I object again, your Honor? I don't see the relevancy of that question.

The Court: I think that is relevant.

Mr. Silva: I take an exception, your Honor.

A. Well, I couldn't exactly tell you. I know that whenever I need money, I get it.

Q. Could you tell us approximately how much?

The Court: Just give an estimate.

A. I couldn't tell you.

The Court: One hundred dollars a month, two hundred dollars a month?

A. When he has money I spend whatever I want, and when he hasn't I spend as little as possible. I couldn't tell you.

Q. You must be able to give some idea. Think, Mrs. Seix?

The Court: Do you get a substantial amount of money?

A. Do you include everything, house, service, everything?

The Court: Everything.

A. It is over \$200.00 a month, or more, maybe." R. T., pp. 18, 19.)

To the foregoing it seems in order to add that what a housewife receives from her husband to pay for the expenses of the home, may not be classed as income.

Four paragraphs thereafter it is stated: "Although the schedules show no cash on hand she thereafter acquired the additional chickens and pigeons already mentioned." As to this remark, suffice it to state that in addition to being bought, chickens and utility pigeons are also raised, In fact, both definitions of poultry contemplate the raising thereof.

The following incorporated under paragraph C, entitled: "Appellant's Farming Operations in Vieques" is also challenged, as not being consonant with the facts of the case:

The first paragraph states that these refer to the sugar enterprise of Benitez Sugar Company and the so-called Community José J. Benítez e Hijos.

The following appears from the testimony produced by petitioner in that respect, which is the only testimony offered on the subject:

"Q. Now, Mrs. Seix, will you state what farming operations you are engaged in at the present time, or have been engaged in the past few years?

A. I have my farming operations in the Island of Vieques, and also I have a poultry business in Ponce.

Q. Now this poultry business in Ponce has no connection with your farms in the Island of Vieques?

A. None whatsoever.

Q. That is to say, you don't have any of your equipment or any of your stock of poultry over in Vieques, nor do you carry on any of the operations of your poultry business in Vieques?

A. None whatsoever; it is only in Ponce.

Q. Now, when you refer to your farms in Vieques, Mrs. Seix, do you refer to the properties which are owned in common by you, your father, your brother and your sisters and Mr. Gabriel Ferrer and his son that is known as the Comunidad Jose J. Benitez e Hijos?

A. Well, it used to be a community; there has not been a comunidad for two or three years, I think, now. We own the place, but there is no comunidad.

Q. Then I understand when you do talk about your farms in Vieques, you do refer to that community of property there which is owned by you and your father and brother and sisters?

A. I refer to the estate, that is, all the farms and whatever equipments there are.

Q. Now when you say estate, you mean the estate that you inherited from your mother, is that not right?

A. Exactly.

Q. And what was your mother's name?

A. Carlota Sampayo Guzman.

Q. Now, what participation or what intervention have you had in the farming operations connected with these properties in Vieques, Mrs. Seix?

A. Well, we have a manager there. I have received advances, but exactly what participation I have had I don't know.

The Court: He means what part have you taken in the farming operations?

A. Well, I am a proprietor. We have a manager.

Q. What control do you have in that?

A. We pay, I pay the manager.

The Court: You pay him from the products of the farm?

A. Yes.

A. You don't actually go over there and say "I want so many acres of gran cultura planted on this farm, or I want this plantation weeded"? You don't participate in the actual operation?

A. No, the manager does that.

Q. And you don't give directions to the manager?

A. No, the manager knows what he has to do. But I am an owner. I own it." (R. T., pp. 8, 9, 10.)

"Q. Now, Mrs. Seix, how much money have you received from the farming operations with respect to these properties in Vieques during the year 1933, 1934, 1935, 1936, 1937 and this year?

A. Let me think. You said I signed those papers in 1933?

Q. I am not sure.

A. If you are not sure, and you are the attorney, imagine me. If that, I have gotten \$20,000 in benefit payments that the Secretary of Agriculture decided was mine, because of my farming operations.

Q. Who decided that?

A. The Secretary of Agriculture in Washington. I got \$20,000.00.

The Court: You have received \$23,000.00, then during that period?

A. Yes, sir: I received \$3,000.00 first and \$20,000.00 in 1937." (R. T. p. 13.)

"The Court: That doesn't make any difference. You were asked what amount of money you received and you said \$23,000.00,—\$3,000.00 when you signed this paper and \$20,000.00 from the benefit payments.

A. Yes, sir.

Q. Now, Mrs. Seix, when you received that \$20,000.00 you signed a certain agreement with other members of this community, did you not, with respect to the payment to you?

A. If my name is there, I must have signed it.

Q. I am asking you whether you did?

A. I cannot answer the question because I don't know what agreement you mean." (R. T., p. 14.)

"Q. Now, Mrs. Seix, how much money have you spent during that same period of years, from 1933 to 1938, inclusive, on the farming operations or on these properties in Vieques?

A. I couldn't answer that. The manager could answer you if you wish.

Q. Have you spent any of your money?

A. I guess so, because I am an owner of the place. I own part of it." (R.T., p. 15, 16.)

Q. Mrs. Seix, did I understand you to testify that you do not personally pay for the taxes and the expenses of the enterprise Benitez Sugar Company?

A. Personally, I don't.

Q. What do you mean when you say that?

A. That I do not go there and pay the person, whoever has got to be paid, but I know from my income from whatever I own in Vieques taxes and everything are paid.

Q. By the manager?

A. By the manager. They are supposed to be paid, anyway.

Q. Do they charge you that?

Mr. Newsom: I object to that, your Honor.

The Court: Yes. Mrs. Seix has just stated, which is very clear, that she owes no debts other than the debts claimed against the Benitez Sugar Company and the properties formerly making up the comunidad; that she paid nothing personally for the operation expenses, taxes, or otherwise, but that whatever was paid for taxes or anything else was paid by the manager of these properties. That is a correct statement, it is not?

A. Yes, sir: but it is charged to us.

The Court: It doesn't make any difference whether it is charged to you or not, if your properties pay it. She has testified that she personally has paid nothing and that she owes nothing except such debts as may be owed by the Benitez Sugar Company, of which she is part owner, and by the Comunidad in which she is part owner. That is what I understand." (R.T., p. 20, 21.)

In addition to the foregoing, the following testimony was produced by Mr. Alfred E. Griffin, Manager of Respondent The Bank of Nova Scotia, as Witness for Respondent.

In referring to the checks originating from benefit payments and from which petitioner received the sum of \$20,000.00 as "farmer-producer," Mr. Griffin said:

"The first check of ten thousand dollars odd was made out in favor of Benitez Sugar Company, Carlota Benitez de Seix and Miguel Ferrer, Trustee for Jose J. Benitez Diaz, Arcadia Benitez Sampayo, Josefa Benitez Sampayo, Jose J. Benitez Sampayo, Gabriel Ferrer Otero and Gabriel Ferrer Benitez, *successors to Comunidad Jose J. Benitez e Hijos*. The second check of ninety-one thousand odd dollars was made out in exactly the same form with the exception that included in the list of payees was the name The Bank of Nova Scotia." (R.T., p. 24, 25) (Emphasis or underscoring supplied.)

Having cited extensively from the testimony produced by petitioner herein AS WITNESS FOR THE BANK OF NOVA SCOTIA, it seems in order to show the opinion that the Hon. Robert A. Cooper, the trial Judge, expressed at the end of her testimony:

"The Court: I don't see any reason to postpone the case to testify as to that. Mrs. Seix has testified, and testified very frankly, and I haven't any doubt that everything she says is true." (R.T., p. 34.)

To what has been heretofore stated we desire to add that there are various other statements incorporated in said appendix which are likewise unsupported by the facts, as well as others which partake more of eminent counsel's desires than of sheer reality. At any rate, the statements referred to do not appear and could not appear from the record. We are simply bringing this reply brief to an end because the airmail closes shortly and we desire to touch upon still another feature.

It Is Respectfully Submitted That Should the Decision and Decree Complained of Be Reversed, Mandate Should Issue Directly to the District Court, Pursuant to Statute.

Much stress is laid by eminent counsel for the Respondent in that part of his final brief entitled "Petitioner's Brief" in support of his viewpoint to the effect that in case the decree complained of should be reversed, the cause should be remanded to the Circuit Court of Appeals and not to the District Court of the United States for Puerto Rico, as prayed for.

At the time that the undersigned local counsel prepared the final brief for petitioner filed herein, he had not as yet had occasion to go carefully into the question, although he was quite certain, from general knowledge of the subject, that our prayer was justified in every respect. In the meantime we have had occasion to go thoroughly into the proposition and find that, as anticipated, the law and the jurisprudence interpreting same are on our side.

U. S. Code, Title 28, Section 877, which is the statute having application, in its pertinent part, reads as follows:

" . . . And whenever on appeal or writ of error or otherwise a case coming from a circuit court of appeals shall be reviewed and determined in the Supreme Court the cause **SHALL BE REMANDED** by the Supreme Court to **THE PROPER DISTRICT COURT** for further proceedings in pursuance of such determination." (Capitals supplied.)

From the foregoing it seems quite evident that where a cause is heard in this Court, by review of a decision and decree or judgment of a circuit court of appeals, the mandate issues to the district court.

The only qualification placed by this Court on that portion of the statute just cited is that wherever certiorari is **SUSTAINED SOLELY** on the ground that matters properly presented to the circuit court of appeals for its con-

sideration have not, in fact, been considered or reviewed by the circuit court, the remand from this Court will be to the circuit court of appeals with instructions to that court to proceed to a further consideration of the cause. That, in effect, is the procedure followed in the case of *American Surety Company of New York v. Marotta*, 287 U. S. 513, cited and relied upon by eminent counsel for the respondent. (To same effect *Lutcher Moore Lumber Co. v. Knight*, 217 U. S. 257; *Twist v. Prairie Oil Co.*, 274 U. S. 684 and *Maryland Casualty Co. v. Jones*, 279 U. S. 792.) In the absence of that, and only that condition precedent, the mandate from this Court only goes to the circuit court of appeals when the certiorari or appeal is dismissed.

Needless to say that in the present case, respondent not having seasonably filed a cross petition, there is nothing to sustain, solely or otherwise, in case of reversal, as far as respondent is concerned.

We respectfully pray this Court that for the reasons aforesaid, petitioner herein may be granted leave to file this reply brief, to be presented to this Court jointly with the final brief for petitioner previously filed herein, upon the case being called for argument; that petitioner herein be granted leave to submit her case on said final brief and on this reply brief, without presenting oral argument and that the prayer of her said final brief, which is reproduced by reference at this point, be granted.

Respectfully submitted,

FERNANDO B. FORNARIE (Ponce, P. R.),

ELMER McCLAIN (Lima, Ohio),

Counsel for Petitioner,

FRANCISCO CAPO PAGAN (Ponce, P. R.).

Of Counsel.

Ponce, Puerto Rico, April 3rd, 1941.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1939.

No. 1027

90

CARLOTA BENITEZ SAMPAYO,

Petitioner,

vs.

THE BANK OF NOVA SCOTIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION TO PETITION

HENRY BROWN,
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WALTER L. NEWSOM, JR.,
Of Counsel.

June 17, 1940.

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BRIEF IN OPPOSITION TO PETITION.

Statement.

The Equity Proceedings:

Respondent, on October 20, 1936, filed in the District Court of the United States for Puerto Rico a bill in equity against Benitez Sugar Company, a corporation, and against various natural persons, including petitioner, individually and as members of José J. Benitez e Hijos, a civil law contractual "Comunidad";¹ wherefore foreclosure was sought of certain securities in satisfaction of various joint and several obligations of the corporation and the "Comunidad".

¹ The "Comunidad" was a partnership within the meaning of the Bankruptcy Act. See *Benitez v. Bank of Nova Scotia*, 110 F. (2d) 169, 172.

A receiver was appointed, who took possession of the properties and operated the enterprise of the "Comunidad" and the corporation under orders of the Court, and a final decree was entered in favor of respondent on August 22, 1938, which adjudged that the corporation and the "Comunidad" were jointly and severally indebted to respondent in the principal amount of \$673,569.82 with interest; that the members thereof were secondarily liable in proportion to their respective shares in the "Comunidad", that of petitioner being a one-twelfth share; that this "Comunidad" and the corporation must on or before September 1, 1938, pay said sum with interest to respondent, in default of which a special master was directed to sell at public auction the various securities consisting of mortgage bonds or notes, shares of stock, chattel mortgages and various crop loan (colono) contracts (R. 373-379).

The debt not having been paid as ordered, the securities were advertised for sale at public auction by the special master to be held on October 13, 1938, at 10:00 o'clock A. M., at which time they were duly sold.

The Proceedings in Bankruptcy:

Approximately one hour before the time fixed for the master's sale, petitioner filed in the District Court her individual petition as an alleged farmer-debtor for composition or extension under Section 75 of the Bankruptcy Act. She claimed to be a "farmer" not only by virtue of an alleged poultry business carried on at her home,²

² Petitioner's alleged poultry business was not a primary occupation but rather a hobby. Her schedules showed 53 chickens and 176 pigeons at her home in the city of Ponce, P. R. The sale of eggs, chickens and squabs produced \$50 or \$60 per month, but her husband, President of Pan-American Trading Company, gave her in excess of \$200 per month and when she needed money she got it from

but also by virtue of her ownership of a one-twelfth interest in the "Comunidad".² (R. 1-4).

Petitioner's schedule of debts set forth her proportionate one-twelfth liability of the debts of the "Comunidad" and the corporation; a debt of \$500 due her personal attorney in this litigation and a debt of \$16.07 due in connection with her alleged poultry business (R. 5-34). Her schedule of assets listed all the properties and assets of the "Comunidad" and the corporation, certain personal property wholly owned by her consisting of household effects valued at \$1,850, and chickens, pigeons, lofts, poultry houses, supplies, etc., valued at \$1,199. She also listed a claim, not specified in amount, against the corporation and "Comunidad". (R. 36-51).

The petition under Section 75 was filed *ex parte*, and the Court entered a *pro forma* order of approval and referred it forthwith to the Conciliation Commissioner (R. 66). Her inventory and proposal were thereafter filed (R. 67-83; 96-120). Having failed to obtain from creditors the

him. She kept no books, owed no debts except one for \$16.07 growing out of her poultry operations, and had no personal debts except amounts due her attorneys. She enjoyed the work and had had the poultry about a year and a half. Her education was in a finishing school and she learned the poultry business from her reading (R. 309-318). The alleged poultry business and assets thereof were not included in the equity receivership.

² The properties and business of the "Comunidad" are located in the island of Vieques where all the operations thereof are carried out. They are entirely distinct from and have no relation to the alleged poultry business (R. 310). From July 1, 1933, to the time the receiver took over, respondent was in possession of and had operated the properties and business in Vieques, pursuant to the provisions of a crop loan contract, receiving and applying the income therefrom on account of the crop loan debts due it by the "Comunidad" and the corporation (R. 361-363).

requisite assents, on November 30, 1938, petitioner amended her petition and asked to be adjudged a bankrupt under subsection (s) of said section, that her property be appraised, exemptions be set aside, and that "she be allowed to retain possession or be placed in possession of all the remainder of her property" upon the conditions provided in subsection (s) (R. 121-124).

On December 1, 1938, respondent filed a motion to dismiss the farm-debtor petition on the grounds, among others, that petitioner was not a farmer and that the Court was without jurisdiction to entertain the petition (R. 174-176). Petitioner filed written objections to the motion, a hearing was had and evidence presented, and the Court on January 3, 1939, entered findings of fact and conclusions of law, an opinion, and an order of dismissal with costs (R. 225-239).

Petitioner's Relation to the Business of the "Comunidad":

Petitioner had never participated in the business and operations of the "Comunidad" and corporation, nor in the management thereof, nor had she ever given any directions or instructions with respect thereto. Her intervention had been limited to the receipt of advances and any profits which pertained to her share. She knew nothing of the business and operations, nor what amounts had been spent therein. She had never paid anything personally to cover expenses of operation, but supposed that the manager had paid them (R. 310-316).

The "Comunidad" was domiciled in Vieques where it maintained its offices and Mr. José Benitez Díaz had been its general manager from the date of its establishment in 1917 (R. 345-346).

There had been no net income of the "Comunidad" or corporation, and the amounts claimed to have been re-

ceived by petitioner as income from the business in Vieques were not profits nor advances which pertained to her by virtue of her ownership of a one-twelfth share.*

* There were two items claimed to have been received by petitioner as income from the "Comunidad". The first was \$3,000 received in 1933 for and upon signing a deed extending the term of the communal contract (R. 318-319). There is nothing in the record to show who made this payment. The second item was for \$20,000 in 1937. Of this amount, the sum of \$17,500 was paid to petitioner pursuant to an agreement entered into between the respondent and the members of the "Comunidad" and the corporation, including petitioner, with reference to the distribution of \$101,443.20 paid by the Secretary of Agriculture as benefit payments corresponding to the sugar crop of 1935 of the "Comunidad" and the corporation under the Agricultural Adjustment Act as follows: (1) a check for \$91,201.80 in favor of respondent, the corporation and all the members of the "Comunidad"; (2) a check for \$10,151.40 in favor of the same payees except respondent (R. 318-319; 337-340). The agreement (R. 337-340) shows that of the total amount of \$101,443.20, the members of the "Comunidad" received an aggregate of \$45,000, yet respondent credited the crop loan account of the "Comunidad" and the corporation for advances made by respondent under the crop loan agreement to finance the making of the said 1935 sugar crop with the total amount of \$101,443.20 less an expense item of \$600. (R. 365).

After making this credit, the said loan account for 1935 crop advances still showed a debtor balance due respondent. (R. 319).

The remaining \$2,500 of the \$20,000 said to have been received by petitioner is not explained in the record.

Other than the said amounts, petitioner received nothing from the "Comunidad" or corporation during the years 1933 to 1938 (R. 312-313). Nor does the record show what if anything was received by petitioner from the "Comunidad" or from the corporation prior to the year 1933.

The Decision of the Circuit Court of Appeals.

On appeal from the order dismissing the petition, the Circuit Court of Appeals for the 1st Circuit confirmed the decision of the District Court. Although the question was not raised by the parties, the Circuit Court, as a preliminary matter, held that the Chandler Act had amended Section 75(r) of the Bankruptcy Act and that consequently the applicable definition of "farmer" was that one given in Section 1(17) of the Bankruptcy Act as revised by the Chandler Act. It then held that petitioner was not a "farmer" by virtue of the enterprise of the "Comunidad" and the corporation because not personally engaged in the operations thereof; and that, assuming her alleged poultry business amounted to the production of poultry or poultry products, as defined in Section 75 of the Act, she was not a farmer by virtue thereof because the principal part of her income was not derived therefrom.

The opinion is reported and published in Vol. 109, Fed. (2d), pp. 743, 747 *et seq.*

Petitioner filed a motion for rehearing on the ground that the Court below had erred in holding that the applicable definition of the term "farmer" was that given in Section 1(17) of the Act as revised by the Chandler amendments and urged that under the definition contained in Section 75(r), she qualified as a "farmer" both by virtue of her alleged poultry business and her share in the "Comunidad". The motion for rehearing was denied on February 21, 1940, and the opinion is printed in the Appendix hereto.

Argument.

Petitioner urges as the principal reason for granting certiorari that the decision of the Circuit Court below is

in conflict with the decision on the same matter of the Circuit Court of Appeals for the Seventh Circuit in the case of *In re Horner*, 104 F. (2d) 600, decided May 29, 1939. The question of the applicability of the new definition of "farmer" as employed in Section 1(17) of the Bankruptcy Act as revised by the Chandler Act rather than the old definition employed in Section 75(r) of the Act was not raised, considered nor decided by the case of *In re Horner*, *supra*. Furthermore, in that case the petitioning debtor clearly qualified as a "farmer" under either the old or new definition. We find no real conflict between the two decisions.

If, however, it be assumed that the two decisions are in conflict, that the decision of the Circuit Court below introduced conflict in the decisions of the Federal Courts and caused doubt and confusion as to the applicable definition of "farmer" in proceedings under Section 75 of the Act, such conflict, doubt and confusion have now been entirely eliminated by the passage of Section 2 of the Act of Congress of March 4, 1940. (Chapter 39, Sess. Public—No. 423, 76th Congress (S. 1935); U. S. Code Congressional Services, 1940, p. 41.)

If the Chandler Act did amend Section 75(r) in so far as inconsistent with Section 1(17) of the Revised Act, as held by the Circuit Court below, then the reenactment of the old Section 75(r) by Section 2 of the amendatory Act of March 4, 1940, clearly had the effect of abrogating the such amendment resulting from the Chandler Act, of reinstating the old definition of the term "farmer" and of making it applicable to Section 4(b) and 75 alike. And that was undoubtedly the intention of Congress upon passing the Act of March 4, 1940. There could have been no other substantial reason or necessity for amending Section 75(r). Such an amendment was not necessary "to ex-

tend until March 14, 1944, the time during which petitions may be filed by farmers under Section 75 of the Bankruptcy Act, the avowed purpose of the Act of March 4, 1940, nor was the exclusion from Section 75(r) of reference to "Section 74" of importance since Section 74 had already been entirely eliminated by the Chandler Act.

While we think the decision of the Circuit Court below is entirely correct, even if we assume that it was erroneous, there is certainly no necessity now for a review by this Court in order to bring about uniformity of decision among the Federal Courts, nor to settle a doubtful question of Federal law of public importance, for that has been done by the Act of Congress of March 4, 1940.

If we assume that the Court below did commit error in applying the new definition of "farmer" contained in Section 1(17) of the Act, petitioner was in no way prejudiced since she would neither qualify as a "farmer" under Section 75(r) of the Act, and the Court below seemed of that opinion.* See *Shyvers v. Security First National Bank*, 108 F (2d) 611 (cert. den. March 4, 1940, 60 S. Ct. 608).

* In the opinion of the Circuit Court below denying petitioner's motion for rehearing, it was said:

"We are far from implying that appellant would qualify as a 'farmer' even if the old definition in Section 75(r) is still in effect. If *Shyvers v. The Security First National Bank*, decided by the Circuit Court of Appeals for the Ninth Circuit on December 21, 1939, is correct, appellant would seem not to be a 'farmer' even under the definition of Section 75(r). We have not gone into this, because we believe that the applicable definition is the new one found in the Chandler Act." (Appendix, p. 13.)^o

Appendix p. 13 and the *Shyvers* case is correct, certiorari having since been denied.

The reasoning of the *Shyvers* case is *a fortiori* applicable to the present case. In the former, Mrs. Shyvers was sole owner of the properties, while in the latter, petitioner is merely the owner of a one-twelfth share in the "Comunidad" which owns the properties.

Furthermore, the amounts received by petitioner from the "Comunidad" were not received by her as income or profits. In fact the "Comunidad" earned no income or profits.* The term "income" as used in Section 75 of the Act means "net income". (See *Sherwood v. Kitcher*, 86 F. (2d) 750, 751.) The item of \$3,000 was received for signing a deed of extension, not because of any agricultural operations. And of the \$20,000, the amount of \$17,500 was received pursuant to a contract with respondent, the corporation and members of the "Comunidad". If the \$45,000 received by the members of the "Comunidad" be considered as net income or profits of the "Comunidad", petitioner's one-twelfth distributable share would not have exceeded \$3,750 and against this amount would have to be deducted petitioner's *pro tanto* liability for the funds advanced to the "Comunidad" by respondent to finance the 1935 sugar crop, which deduction would exceed \$3,750.

"Section 327.—The share of the participants in the benefits as well as in the charges, shall be proportioned to their respective shares." (Civil Code of Puerto Rico (1930 Ed.) Sec. 327, par. 1.)

Nor was petitioner a farmer as defined in Section 75(r) of the Act by virtue of her alleged poultry business. Her activities in this respect, though personal, seem to be more nearly a hobby than a business, an avocation rather than a vocation. They do not constitute the production of poultry or poultry products, as specified in Section 75(r), nor do

* See note 4, page 5, *supra*.

they appear to constitute her "primary" activity or occupation. And she certainly does not derive the principal part of her income from those activities.

3

Finally, as the Circuit Court below said, we are dealing here with the individual petition of one of the members of the "Comunidad", not a petition by or on behalf of the "Comunidad" itself which could have been filed under Section 75(s), par. 4. If the members of the "Comunidad" be treated as "joint tenants" or "tenants in common" as those terms are known to the Anglo-American law, neither the common properties nor administration thereof could have been drawn into the jurisdiction of the Bankruptcy Court upon the individual petition of a member owning a one-twelfth undivided interest. (*In re Harris*, 15 Fed. Supp. 404.)

But the "Comunidad" was much more than an Anglo-American joint tenancy or tenancy in common. It was an Anglo-American conventional partnership. *Benites v. Bank of Nova Scotia*, 110 F. (2d) 169, 172, decided March 8, 1940. In that case the Circuit Court below confirmed an order of the United States District Court for Puerto Rico denying a motion for stay of the master's sale and further proceedings in the same equity cause already referred to hereinabove which motion had been filed by another member of this same "Comunidad" in proceedings under Section 74 of the Act upon his individual petition.

The members of this "Comunidad" are therefore co-partners, and the agricultural operations are those of the "Comunidad", not those of petitioner. It is furthermore quite obvious that the properties and business of the "Comunidad" (a partnership) could not be brought within the exclusive jurisdiction of the Bankruptcy Court upon the

individual petition of one of its members (co-partners). (*Benites v. Bank of Nova Scotia*, 110 F. (2d) 169, *In re Gerstenzang*, D. C., 52 F. (2d) 863; Section 5(h) of the Bankruptcy Act.

Thus, even if petitioner had qualified as a farmer, the filing of her individual petition under Section 75 would not have brought into play the automatic and self-executing stay provisions of that section with reference to the properties of the "Comunidad" (partnership) nor those of the corporation, and the Bankruptcy Court would not have thereby obtained jurisdiction, exclusively or otherwise, over their properties and affairs. And yet these were the results which petitioner sought to achieve by her proceedings under Section 75.

The various other questions discussed in petitioner's brief appear to us to have no relevancy on the matter now before this Court.

Conclusion.

The decision of the Circuit Court below is correct. There is no conflict of decisions and no question of importance calling for a review by this Court.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

HENRY BROWN,
Counsel for Respondent

WALTER L. NEWSOM, JR.,
Of Counsel.

June 17, 1940.

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Appendix.**UNITED STATES CIRCUIT COURT OF APPEALS****FOR THE FIRST CIRCUIT****OCTOBER TERM, 1939.****No. 3487.****CARLOTA BENITRE SAMPAYO,*****Defendant, Appellant,*****THE BANK OF NOVA SCOTIA,*****Complainant, Appellee.*****APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES****FOR PUERTO RICO.****Before WILSON, MAGRUDER and McLELLAN, JJ.****Opinion of the Court****UPON PETITION FOR REHEARING.****FEBRUARY 21, 1940.**

PER CURIAM. Challenging our holding that the new definition of "farmer" in the Chandler Act applies to proceedings under Section 75 of the Bankruptcy Act, appellant cites a general order in bankruptcy relating to petitions under Section 75 filed by personal representatives of deceased farmers. General Order No. 50 (9), effective February 13, 1939, reads in part as follows: "• • • The

petition shall show to the satisfaction of the district court that the decedent at the time of his death was a farmer within the meaning of subdivision (r) of section 75 . . . (305 U. S., App. p. 30). Form in Bankruptcy No. 63, accompanying the General Orders in Bankruptcy, provides that a petition under Section 75 shall recite that the petitioner "is primarily *bona fide* personally engaged in producing products of the soil (or that he is primarily *bona fide* personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations)".

This provision of General Order No. 50 (9) was carried over without change from old General Order L (9) promulgated April 17, 1933 (288 U. S. 643). Form 63 was carried over without substantial change from the earlier Form No. 65 (288 U. S. 646).

The inference is that the Supreme Court in its latest revision of the General Orders in Bankruptcy, relating to proceedings under Section 75, has assumed that the old definition of "farmer" in Section 75(r) was not affected by the Chandler Act. Had this matter been called to our attention before, we should have regarded even a tacit interpretation put upon the Chandler Act by the Supreme Court as of great importance, though not as compelling as would be a considered decision of the Supreme Court in a litigated case.

In determining whether we should draw the inference which appellant would have us draw from the general order in bankruptcy above referred to, it is noteworthy that the Supreme Court itself has had occasion to disregard a general order in bankruptcy inadvertently carried over and republished after a significant but unnoticed change of the law. *Meek v. Centre County Banking Co.*, 268 U. S. 426. In all candor we cannot now say that we believe our previously announced conclusion to be erroneous. That conclusion seemed to us plainly indicated on the face of the statute.

We are far from implying that appellant would qualify as a "farmer" even if the old definition in Section 75(r) is still in effect. If *Shyvers v. The Security-First National Bank*, decided by the Circuit Court of Appeals for the Ninth Circuit on December 21, 1939, is correct, appellant would seem not to be a "farmer" even under the definition of Section 75(r). We have not gone into this, because we believe that the applicable definition is the new one found in the Chandler Act.

The petition for rehearing is denied.

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CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1940

No. 90

CARLOTA BENITEZ SAMPAYO,
Petitioner,

vs.

THE BANK OF NOVA SCOTIA,
Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF
APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENT

✓
WALTER L. NEWSOM, JR.,
Attorney for Respondent.

J. HENRI BROWN,
Of Counsel.

April, 1941.

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Section 1(17) of the Bankruptcy Act, as amended by the Chandler Act, repeals Section 75(r) of the Bankruptcy Act, as amended by the Act of May 15, 1935, insofar as Section 1(17) and Section 75(r) are inconsistent.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1940

No. 90

CARLOTA BENITEZ SAMPAYO,
Petitioner,

vs.

THE BANK OF NOVA SCOTIA,
Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF
APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENT

Jurisdiction

The jurisdiction of this Court rests on Section 240(a) of the Judicial Code as amended by Act of February 13, 1925 (28 U. S. C. A. 347(a)) and Section 24(c) of the Bankruptcy Act as amended by the Chandler Act (11 U. S. C. A. 47(c)).

Opinion Below

The opinion of the Circuit Court of Appeals for the First Circuit is reported in 109 F. (2d) 743, at pages 747-751, and is printed in the Record, pages 59-68. The Opinion, Findings of Fact and Conclusions of Law of the United

States District Court for Puerto Rico are not reported, but are printed in the Record, pages 17-25.

Statement

Carlota Benitez Sampayo, here Petitioner, filed her individual petition in the United States District Court for Puerto Rico, in Bankruptcy, as a farmer-débtor for composition or extension under Section 75 of the National Bankruptcy Act (11 U. S. C. 203, 11 U. S. C. A. 203). She alleged therein that she was primarily bona fide—personally engaged in producing products of the soil, the production of poultry and livestock and poultry products in their unmanufactured state and that the principal part of her income was derived from one or more of the foregoing operations, as follows: production of sugar cane and the processing of same into sugar and molasses, production of cattle, poultry and sale of eggs (R. 1).

She based her claim to be a "farmer" on (1) the fact that at her home in the City of Ponce, Puerto Rico, where she lives with her husband, she had been for the past year and a half (*i. e.*, from approximately April 22, 1937)¹ engaged in a small way in raising and selling poultry and eggs from which she derived a profit of about \$50.00 per month (R. 21, 59); and (2) on the additional fact that she owned an interest in a large enterprise situated in the Island of Vieques devoted to the production of cane sugar and molasses from sugar cane grown by it and by independent formers (*colonos*) financed by the enterprise (R. 21-22, 59). Her interest consisted of a one-twelfth share in the contractual "Comnnidad" José J. Benitez e Hijos

¹ The equity proceedings in which the foreclosure sale of the securities hypothecated by the Comunidad and corporation was decreed were begun October 20, 1936 (R. 53).

which had large holdings of land in Vieques, cattle, buildings and agricultural equipment and which owned and held the capital stock of the Benitez Sugar Company, a corporation.² The corporation owned the sugar factory, railroad, marine equipment, cattle, a small amount of land, etc. The corporation and "Comunidad" for many years had been conducted "as a single and integrated enterprise" (R. 21-22, 53-54).

Failing to obtain the requisite consent of creditors for composition, Petitioner filed her petition for adjudication under Section 75(s) of the Bankruptcy Act (R. 3).

Thereafter, upon motion of The Bank of Nova Scotia, here Respondent, the District Court dismissed the proceedings under Section 75 for lack of jurisdiction (R. 25). The District Court, among other things, held that Petitioner was not a "farmer" as defined in Section 75 of the Bankruptcy Act (R. 24-25).

Upon appeal the Circuit Court of Appeals for the First Circuit affirmed the decree of dismissal of the District Court (R. 66).

The Circuit Court held (1) that the new definition of the term "farmer" contained in Section 1(17) of the Bankruptcy Act as amended by the Chandler Act (11 U. S. C. A. 1(17)) was applicable to proceedings under Section 75 of the Act; (2) that Petitioner did not qualify as a "farmer" under that definition (R. 60-65); but it expressly refrained from deciding whether Petitioner would have qualified as a "farmer" as that term was defined in Section 75(r) of the Act (11 U. S. C. A. 203(r)) (R. 68).

² The "Comunidad" was a partnership within the meaning of the National Bankruptcy Act. *Benitez v. Bank of Nova Scotia*, 1 Cir., 1940, 110 F. (2d) 169, 172; *Benitez v. Bank of Nova Scotia*, 1 Cir., 1940, 116 F. (2d) 359, 361.

Question Presented

The sole question presented here is whether in a proceeding under Section 75 of the Bankruptcy Act the definition of the term "farmer" was to be determined by subsection (r) of Section 75 of the Act (11 U. S. C. A. 203(r)), or by Section 1(17) of the Act as amended by the Chandler Act (11 U. S. C. A. 1(17)).³

That question would seem to be purely one of statutory interpretation, and not one of application.⁴ The entire process of interpretation in this case involves the selection of the proper statute.

Legislative History

Section 75 of the National Bankruptcy Act (47 Stat. 1467), as originally enacted March 3rd, 1933, consisted of Sub-sections (a) to (r).⁵ Sub-section (s) was added in 1934.⁶ Sub-section (r) contained the following definition of the term "farmer":

"(r) For the purposes of this Section and Section 74, the term 'farmer' means any individual who

³ After consideration of Petitioner's "Petition for Instructions, etc.", filed here, the Clerk by letter of November 14, 1940, informed counsel as follows: "* * *. The Court has not entered a formal order in the matter, but has authorized me to advise you that the question upon which this case should be briefed and argued in this Court is whether in a proceeding under Section 75 of the Bankruptcy Act the definition of the term 'farmer' is to be determined by Section 75(r) of that Act or by Section 1(17) of the Chandler Act."

⁴ A further reason for limiting the question to one of interpretation no doubt is the fact that the complete record below was not filed in this Court. See Clerk's certificate to original record filed here.

⁵ It was one of several sections added to the 1898 Act, as amended, by a new Chapter VIII entitled "Provisions for the Relief of Debtors" (47 Stat. 1467).

⁶ This was known as the Frazier-Lemke Act (48 Stat. 1298) which was held to be unconstitutional in *Louisville Joint Stock Land Bank v. Radford*, 1935, 295 U. S., 555, 79 L. Ed. 1593. A new subsection (s) enacted in 1935 was held to be constitutional in *Wright v. Vinton Branch, etc.* (1937), 300 U. S. 440, 81 L. Ed. 736.

is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such farming operations occur."

And Sub-section (c) provided that a "farmer" could file a petition under the Section at any time up to March 4, 1938.

By Section 3 of an Act of May 15, 1935 (49 Stat. 246), the definition of the term "farmer" contained in Section 75(r) was amended to read as follows:

"(r) For the purposes of this section, section 4(b) and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

As stated in *First National Bank & Trust Company v. Beach* (1937), 301 U. S. 435, 438, 81 L. Ed. 1206, 1208:

"The only effect of the 1935 amendments of the statute, in so far as they have to do with the definition of a farmer, was to make it clear that farming operations include dairy farming and the production of poultry and livestock products in their unmanufactured state as well as the cultivation of the products of the soil. There had been decisions to the contrary. • • •"

This Amendatory Act of May 15, 1935 did significantly more, however, than provide an extended definition of the term "farmer" for the purposes of Section 75. It also made this extended definition applicable uniformly and consistently throughout the Bankruptcy Act. Thus Section 4(b) of the Act (30 Stat. 544) was amended by substituting the word "farmer" for the language "a person engaged chiefly in farming or the tillage of the soil"; and likewise in Section 74(l) of the Act the word "farmer" was substituted for the language "person engaged chiefly in farming or tillage of the soil." The amended section 75(r) expressly provided that for the purposes of this Section (75), Section 4(b) and Section 74, the term farmer was to be taken as therein defined. In no other sections of the Bankruptcy Act was the term "farmer" employed.

The achievement of this consistency and uniformity of definition throughout the Act was the avowed legislative purpose or intent. In House Report No. 455, 74th Congress, 1st Session, of the Committee on the Judiciary, with respect to this 1935 amendatory act, at page 2, it is said:

"The purpose of this amendatory legislation is to clarify the intent of Congress to include stock raisers within the purview of the definition of a 'farmer' in section 75 and to achieve the same result with regard to other sections of the Bankruptcy Act in which reference is made to farmers; i. e., section 4(b) excepting farmers from being adjudged involuntary bankrupts, and section 74(I) protecting farmers from involuntary proceedings under said section. It is desirable that the definition of the word 'farmer' be uniform in all sections of the Bankruptcy Act."

* This 1935 amendatory Act was originated by introduction of companion bills in both houses, S. 1616 and H. R. 5797, both in vastly different terms from the Act finally enacted. S. 1616 passed the Senate and was referred to the House. In the House S. 1616 was by unanimous consent adopted as a substitute for H. R. 5797 as

On March 4, 1938, Congress passed an Act extending till March 4, 1940, the time within which a petition might be filed under Section 75 of the Bankruptcy Act (52 Stat. 84, 11 U. S. C. A. 203(c)), the period of five years specified originally having expired.³

In so far as the definition of the term "farmer" was concerned, the Bankruptcy Act thus remained as amended by the Act of May 15, 1935 (49 Stat. 246), until the passage of the Chandler Act on June 22, 1938, effective September 22, 1938 (52 Stat. 840). Its history is significant.

Following the last substantial amendments made by Congress in 1926 to the Bankruptcy Act of 1898, there had been a constant demand for its revision. After the indictments in the Southern District of New York in 1929 in certain frauds in Bankruptcy proceedings, the demand for revision of the Act developed into strong agitation for change in the law which with the Donovan investigation and report became more widespread. This led to a nationwide survey by the United States Department of Justice under the Presidential order of July 29, 1930. A comprehensive report of this survey was made December 5, 1931 which contained concrete recommendations. These were embodied in the Hastings-Michener bill introduced in the

amended, S. 1616 was by unanimous consent amended by striking out everything after the enacting clause and substituting therefor the provisions of H. R. 5759 as amended by the Committee on the Judiciary (79 Cong. Rec. 7009-7010). The Senate concurred by unanimous consent (79 Cong. Rec. 9212-9213). As appears from House Report 455, 74th Congress, 1st Session, H. R. 5759, as amended by the Committee, is exactly as the act finally passed. Thus the intention to achieve uniformity of definition throughout the Bankruptcy Act was the unanimous intention of Congress.

³ This Act amended subsections (b), (c) and (s) but made no reference to subsection (r) of section 75. In so far as here pertinent, subsection (c) as amended, reads as follows: "(c) At any time prior to March 4, 1940, a petition may be filed by any farmer * * *."

Seventy-second Congress designed to bring about a complete revision of the Bankruptcy Act. Extensive hearings before the Senate and House Committees on this bill were held. While there was much merit in the bill fundamental defects in it were thought to exist.

Out of these hearings on the Hastings-Michener bill the National Bankruptcy Conference came into being, a nation-wide organization of persons who had been connected with all phases of bankruptcy law and procedure.

After some five years of careful study, the National Bankruptcy Conference prepared for the House Committee on the Judiciary the sixth and final draft of a bill for revision of the Bankruptcy Act with an analysis thereof which had been presented in the 74th Congress by Mr. Chandler May 28, 1936, as H. R. 12889 (Committee Print, Analysis of H. R. 12889, 74th Congress, 2d Session.)

Copies of H. R. 12889 were widely distributed, and extensive hearings were had on it before the Senate and House Committees on the Judiciary. It was resolved that further changes were advisable.

With certain changes the above mentioned draft of H. R. 12889 was presented in the House as H. R. 8046, 75th Congress, 1st Session, on July 29, 1937 by Mr. Chandler. Extensive hearings on it were held before the House Committee on the Judiciary which reported it back to the House by Report No. 1409, entitled "Revision of the National Bankruptcy Act". The bill was passed by the House without any real debate August 10, 1937 (81 Cong. Rec. 8645-8649) and referred to the Senate Committee on the Judiciary. This Committee reported it back to the Senate with substantial amendments, and as so amended, the bill passed the Senate June 10, 1938 (83 Cong. Rec. 7602) without any real debate. The House concurred in the Senate amend-

ments without any real debate (83 Cong. Rec. 9101-9110). The bill was signed by the President June 22, 1938 and became effective September 22, 1938.* It is known as the Chandler Act.

The Chandler Act contained a new definition of the term "farmer" in Chapter 1, Section 1(17), (11 U. S. C. A. 1(17)), which reads as follows:

"Section 1. Meaning of Words and Phrases. The words and phrases used in this Act (title) and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

"(17) 'Farmer' shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in production of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations."

This definition is an exact copy of Section 1(17) of the draft of H. R. 12889 prepared by the National Bankruptcy Conference, which with the note copied below is found at pages 4-5 of the Committee Print Analysis of H. R. 12889, *supra*:

"(Note.—The Amendment of May 5, 1935, 11 U. S. C. A. Sec. 203 (August 1935 Supp.) extends the meaning of the term 'farmer' to include dairy farmers and persons engaged in the production of poultry or livestock or its products in their unmanufactured state, whose principal income is derived from any one or

* For history and proceedings of the National Bankruptcy Conference and history of H. R. 12889 and H. R. 8046, see Committee Print, Analysis of H. R. 12889, 74th Congress, 2d Session, pp. 1-V and House Report No. 1409, 75th Congress, 1st Session, pp. 1-3.

more of these operations.¹⁰ Correspondingly, Section 4 of the Act is amended by substituting the phrase 'a farmer' for the language a person engaged chiefly in farming or tillage of the soil. See 11 U. S. C. A. Sec. 22 (August 1935 Supp.). Pursuant to this purpose of Congress to expand the meaning of the term, it would seem advisable to formulate a new definition for the term and to include it in Section 1 as clause (17). However, the Amendatory Act (*supra*) is too broad. While the above definition is essentially derived therefrom, it is restricted to a proper scope.—Weinstein)."

This same comment, except for the last two sentences thereof, is found in the Report of the House Committee on H. R. 8046. (House Report No. 1409, 75th Congress, 1st Session, p. 6.)

Section 4(b) of the Bankruptcy Act, as amended by the said Chandler Act, is likewise taken almost literally from the draft of H. R. 12889 prepared by the National Bankruptcy Conference.¹¹ We copy the following from the note found at page 20 of the said Committee Print Analysis of H. R. 12889, with reference to Section 4(b):

"NOTE.—The newly defined term 'farmer' is here employed, Sec. 1(17). * * *"

Essentially the same statement is found in the House Committee report on H. R. 8046 (House Report No. 1409, 75th Congress, 1st Session, p. 7) which reads as follows:

"(6) Who may become bankrupts—Section 4: In the

¹⁰ It is interesting to note that the National Bankruptcy Conference here interprets the definition of the term "farmer" as used in the Amendatory Act of May 15, 1935 in the same way as the acceptable interpretation made by the Courts. See *Shyers v. Security First National Bank*, 9 Cir. 1939, 108 F. (2d) 611 (Cert. den. 309 U. S. 668, 84 L. Ed. 1015, Mar. 4, 1940).

¹¹ One difference here irrelevant is that the Chandler Act omitted the words "or territory" found in the draft of H. R. 12889.

revision of subdivision b, the newly defined term 'farmer' is employed, Section 1a(17). * * *

In the draft of H. R. 12889 prepared by the National Bankruptcy Conference, Section 74 of the Bankruptcy Act was eliminated by transferring its provisions in amended form to Subsection I of Section 12 of H. R. 12889. (Committee Print Analysis of H. R. 12889, p. 234.) By virtue of this elimination and rearrangement, sub-section (1) of Section 74 of the Act appears as Sub-section I (10) of Section 12 of said draft of H. R. 12889 with the following note (Committee Print Analysis of H. R. 12889, p. 51):

"(NOTE—This is derived from Section 74(1) and (p). It may be noted in passing, however, that the latter subdivision, which prohibits an involuntary proceeding under Section 74 against a wage earner, is an anomaly; there is no provision in Section 74 for involuntary proceedings. The word 'farmer' is defined in Section 1.—Weinstein)."

In H. R. 8046, the arrangement is changed so that Section 74 is eliminated by transferring its provisions as amended to Chapters XI and XII, and in which this same provision prohibiting an adjudication of a "farmer" without his consent, is found as Sections 379 and 484. (House Report No. 1409, 75th Congress, 1st Session, pp. 125 and 135.) And this prohibition is now found as such sections in the Bankruptcy Act as amended by the Chandler Act (11 U. S. C. A. 779 and 884).

None of the Sections of H. R. 8046 which we mentioned above (i. e., Sections 1(17), 4(b) and 379 and 484) were affected by any of the amendments to the bill made in the Senate. (Senate Report No. 1916, 75th Congress, 3rd Session and 83 Cong. Rec. 8694.) With reference to the new

definition of "farmer" we extract the following from Senate Report No. 1916, 75th Congress, 3d Session, page 11 thereof:

"Section 1—meaning of words and phrases—This section deals with definitions. Several of the definitions of terms used in the present Act are loosely drafted and others are not sufficiently comprehensive or inclusive. Other terms, which recur frequently in the Act, are not defined. The bill restores the alphabetical order which had originally been set up in the Act, clarifies, corrects and strengthens the existing definitions, and adds new definitions for the terms 'bona fide purchaser', 'date of adjudication', 'farmer', the phrase 'to record', and 'relatives'."

It is of further significance to notice the declared purposes or intention of the drafters of the Sections to which we have here referred. We quote the following from pages IV and V of the Committee Print Analysis of H. R. 12889:

"Summarized, the bill seeks to accomplish the following general purposes:

"1. To provide an improved composition procedure, including features of the so-called 'relief provisions' for individual and agricultural compositions and extensions and a carefully prepared plan for corporate reorganizations, thus retaining the desirable permanent provisions of the new legislation and making possible the elimination of cumbersome, overlapping and inconsistent provisions; also to make provision for wage-earner amortizations. . . .

"12. To clarify certain of the definitions and to add desirable new definitions."

Under the heading "Purposes of the Bill" (House Report No. 1409, 75th Congress, 1st Session, p. 3), we find a declaration of the general purposes of H. R. 8046 in essen-

tially the same language as that of the National Bankruptcy Conference quoted above. And in the Senate Report of the Committee on the Judiciary as to H. R. 8046 (Senate Report No. 1916, 75th Congress, 3d Session, p. 3) essentially the same declaration of purposes is made. Purpose No. 1 in these latter-mentioned reports of the House and Senate is stated in part as follows:

"1. To clarify certain of the definitions and to add desirable new definitions; * * *"

In the draft of H. R. 12889 prepared by the National Bankruptcy Conference, Section 75 of the Bankruptcy Act is not set out either fully or in part, although practically all other sections of the Act are set out with deleted language stricken through and new language proposed as amendments in italics. (Committee of H. R. 12889, note at foot of title page.) And at page 234 of said Committee Print Analysis of H. R. 12889, the following appears:

"Sec. 75.—Agricultural Compositions and Extensions.

"(Inasmuch as this section is but temporary and expires by its own limitation, the Conference makes no recommendation with reference to it. In the event of its elimination debtors now entitled to its benefits would find relief under Sub-section I of Section 12.—King * * *.)"

And in House Report No. 1409 on H. R. 8046, 75th Congress, 1st Session, at pages 56 to 144, Part III thereof,

¹² H. R. 6452 and S. 2215, companion bills, were introduced by Mr. Lemke April 15, 1937 and by Mr. Frazier April 20, 1937, respectively, to make Section 75 of the Act permanent by eliminating from subsection (c) thereof the words "within five years after this section takes effect". S. 2215 was passed by the Senate July 22, 1937 (81 Cong. Rec. 9591). The House Committee on the Judiciary decided, after extensive hearings on H. R. 6452 and S. 2215 as passed by the Senate that Section 75 should not be made permanent in its effect.

pursuant to paragraph 2(a) of Rule XIII of the Rules of the House of Representatives the Act is set out with existing law proposed to be omitted enclosed in brackets, with new matter printed in italics and with existing law in which no change is proposed in roman type. Section 75 is not set out in the said House Report but at page 144 thereof we find the following:

"Section 75.—Agricultural Compositions and Extensions. (No change)."

No text of the Act is set out in Senate Report No. 1916 on H. R. 8046, 75th Congress, 3rd Session, but at page 10 thereof we find the following:

"Section 2 of Bill"

"40. Section 2 of the bill, page 296, amends the Frazier-Lemke Act (sec. 75 of the Bankruptcy Act) to allow the Courts to grant to farmers who have been granted a stay of proceedings under section 75(s) of such Act, a further stay to November 1, 1939."

And at page 18 of said Senate Report, we find the following:

"Chapter VIII. Provisions for the Relief of Debtors.

"This Chapter includes sections 74, 75 and 77. Section 74 is combined with section 12 to constitute the proposed new Chapter XI on arrangements. Section 75 relates to agricultural compositions and extensions. These expire by limitation and are, therefore, not covered by the bill. No amendments are proposed to section 77 regarding railroad reorganizations."

Nor was any part of the text of Section 75 of the Bankruptcy Act included in H. R. 8046 as engrossed and signed

¹³ It will be remembered that Section 2(a) and (b) of H. R. 8046 was inserted as an amendment to the bill in the Senate and concurred in by the House (83 Cong. Rec. 8694).

and as it was printed in the official publication of the Chandler Act. (Public No. 696, 52 Stat. 840, 75th Cong., 3rd Sess., Ch. 575.)

The 1938 edition of the Judicial Code (11 U. S. C. 203(r), 11 U. S. C. A. 203(r)) includes Section 75(r) of the Bankruptcy Act exactly as it existed prior to the Chandler Act, i. e., as amended in the Amendatory Act of May 15, 1935 (49 Stat. 246) which we have copied hereinabove.

On March 4, 1940, after the decision below,¹⁴ Congress passed "An Act to extend until March 4, 1944, the time during which petitions may be filed by farmers under Section 75 of the Bankruptcy Act" (54 Stat. 40, 11 U. S. C. A. 203(c) and (r). Section 1 of this Act amended subsection (c) of Section 75 of the Bankruptcy Act by inserting the words "March 4, 1944" in substitution of the words "March 4, 1940". Section 2 of this Act of March 4, 1940 reads as follows:

"Sec. 2. Section 75(r) of such Act (i. e., The Bankruptcy Act of 1898 as amended) is amended to read as follows:

"(r) For the purposes of this section and section 4(b) the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal

¹⁴ *Benites v. Bank of Nova Scotia*, 1 Cir. 109 F. (2d) 743 was decided January 10, 1940, rehearing was denied February 21, 1940. The Chandler Act became effective September 22, 1938. The debtor's (here petitioner) petition was filed in the District Court October 13, 1938.

representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

This is copied literally from Section 75(r) of the Bankruptcy Act as amended by the Act of May 15, 1935 (49 Stat. 246) already set out hereinabove except for the omission of the words "and Section 74". With reference to Section 2 of this Act of March 4, 1940, we extract the following from the House Report of the Committee on the Judiciary (House Report No. 1658, 76th Cong., 3d Sess., p. 4):

"Section (2) is a clarifying amendment, Section 74 of the Bankruptcy Act was eliminated by the Chandler Act of 1938, and its provisions are now included in Chapter XI of that Act. Reference to section 74 is confusing, and the committee recommends that such reference be stricken out of the law."

Nothing more relating to this amendment is to be found in said report nor in the record of the hearings before the House Committee on the Judiciary on the bills, H. R. 7528 and S. 1935.¹⁵

Nor do we find anything with reference thereto in the report of the Committee on the Judiciary of the Senate.¹⁶

¹⁵ Hearings before the Special Subcommittee on Bankruptcy, etc., of the Committee on the Judiciary of the House, etc., 76th Cong. 3d Sess., on H. R. 7528 and S. 1935, etc., Serial 14, U. S. Gov. Printing Office.

¹⁶ Senate Report No. 1045, 76th Cong. 1st Sess. on S. 1935, introduced by Mr. Frazier March 27, 1939, as reported by the Committee on the Judiciary with amendments August 1, 1939 provided for a complete revision of Section 75 of the Bankruptcy Act, and in the form in which it passed the Senate, subsection (j) thereof included the definition of the term "farmer" in the exact words of former subsection (r) as amended May 15, 1935 except that the term "farmer debtor" was substituted for the term "farmer" (House Report No. 1658, 76th Cong. 3d Sess., p. 12.) H. R. 7528, the companion bill to S. 1935, was introduced by Mr. Lemke August 5, 1939. After hearings on the two, the House Committee reported

The above legislative history, we believe, contains the relevant legislative material which will, no doubt, assist the Court in the determination of the legislative intent.

Argument

Section 1(17) of the Bankruptcy Act, as amended by the Chandler Act, repeals Section 75(r) of the Bankruptcy Act, as amended by the Act of May 15, 1935, insofar as Section 1(17) and Section 75(r) are inconsistent.

The language of Section 1(17) of the Chandler Act is plain, and unless inconsistent with the context of Section 75, the definition in Section 1(17) of the term "farmer" is applicable to proceedings under Section 75 just as it is to Section 4(b) or Sections 379 and 484 of the Chandler Act. There is certainly nothing in the context of subsections (a) to (q) and (s) of Section 75 which is inconsistent with Section 1(17) of the Chandler Act.

Subsection (r), after the Chandler Act, in so far as repugnant to Section 1(17) must be taken as repealed by the Chandler Act because subsection (r) is inconsistent with the provisions of the Chandler Act. Section 4 of the Chandler Act specifically provides that "all Acts or parts of Acts inconsistent with any provisions of this Amending Act are hereby repealed." (*Gibson v. United States* (1904), 194 U. S. 182, 48 L. Ed. 926; *United States v. Yuginovich* (1921), 256 U. S. 450, 65 L. Ed. 1043; *United States v. California* (1936), 297 U. S. 175, 80 L. Ed. 567.)

on S. 1935 and recommended that everything after the enactment clause be stricken and there be substituted therefor the provisions in the Act of March 4, 1940 as passed, and also that the title be changed to read as passed. (House Report No. 1658, 76th Cong. 3d Sess. p. 1.)

If not repealed subsection (r) of Section 75 would render Section 1(17) of the Chandler Act utterly meaningless, and completely inapplicable to Section 4(b) as well as sections 379 and 484. Subsection (r) provides that the definition of "farmer" therein contained is applicable to section 4(b) and Section 74. Sections 379 and 484 are repetitions of Section 74(1) transferred to the new section numbers. And Sections 379 and 484 are nothing more or less than the application of the provision of 4(b) against the involuntary adjudication of a farmer to proceedings for arrangements under Chapters XI and XII (formerly Section 74). The term "farmer" is not employed in any other Sections of the Act, except Section 1(17). Thus if Section 75(r) stood after the Chandler Act, Section 1(17) would be meaningless since it would be wholly inapplicable to any part of the Bankruptcy Act. Certainly neither Congress nor the National Bankruptcy Conference would have used the language of Section 1(17) unless some meaning was sought thereby to be conveyed.

The result of such an interpretation would not only be absurd, but it would defeat the avowed legislative intent, for it was unanimously and expressly declared in the Committee Reports that Section 1(17) of the Chandler Act defined the term "farmer" as used in Section 4(b) and Sections 379 and 484. And so also was it declared by the National Bankruptcy Conference.

Thus if the repugnant part of Section 75(r) be still retained as a part of the context of Section 75, it must be retained as a part of the context of Section 4(b) and Sections 379 and 484 (formerly Section 74(1)). And if the context of Section 75 thus be treated as inconsistent with Section 1(17), so must the context of Sections 4(b), 379 and 484 be inconsistent with Section 1(17).

It has been suggested that Section 75(r), after the Chandler Act, should be read just as if the words "section 74" and "section 4(b)" did not appear therein; that the intention of Congress was to have one definition of the term "farmer" for the purposes of Section 75, and another and different definition of the term for the purposes of Sections 4(b), 379 and 484.¹⁷ Not only would such a situation be awkward and absurd; it would also defeat a clearly defined intent of Congress to have a consistent and uniform definition of the term "farmer" throughout the Bankruptcy Act. Congress took great pains to achieve that result by the Amendatory Act of May 15, 1935, and there is nothing to indicate that that intent and policy was to be changed. Even in the Amendatory Act of March 4, 1940, when subsection (r) was reenacted the reference to Section 4(b) was retained. And while the reference to Section 74 was deleted, the reenacted subsection (r) must be interpreted to apply also to Sections 379 and 484 as well as 4(b). Thus this policy of uniformity and consistency of definition is reaffirmed by Congress.

It should be furthermore pointed out that not only would a duple meaning of the term "farmer" be awkward and contrary to the policy of uniformity and consistency; it would also render practically meaningless the definition of Section 1(17) as applied to the term "farmer" as used in Sections 4(b), 379 and 484. If we suppose involuntary bankruptcy proceedings against a person who would qualify as a farmer under Section 75(r) but not under Section 4(b), or Sections 379 or 484, the policy of Section 4(b) would be defeated by that person by filing a petition under

¹⁷ Oregon Law Review, Vol. XVIII, No. 2 Exemption of Farmers from Involuntary Proceedings under the Chandler Act, pp. 109-114, February 1939.

Section 75 or under Chapter XI or Chapter XII or if the prior initiation of proceedings under Section 4(b) prevented voluntary proceedings under Section 75 or Chapters XI or XII, we would have the amazing case of a person sought to be protected under Section 75 frustrated by the provisions of Section 4(b) and the defeat of the Policy of Section 75.

The suggestion that Section 75(r), after the Chandler Act, be read as if the reference to Sections 74 and 4(b) had been eliminated, would lead to absurdity and would defeat the avowed legislative intent.

This awkward and absurd situation of a duple meaning of the term "farmer" in the Bankruptcy Act is not avoided by interpreting the words "shall include" found in Section 75(r) as amended May 15, 1935, as words of enlargement used in contrast to the words "shall mean" found in Section 1(17) of the Chandler Act. (See *American Surety Company of New York v. Marotta* (1933), 287 U. S. 513, 517, 77 L. Ed. 466, 468.) If Section 75(r) be considered as unaffected by Section 1(17), then Section 75(r) furnishes the definition of the term "farmer" for the entire Bankruptcy Act. Thus the question of whether Section 75(r) is more extensive than Section 1(17) is sterile.

The note of the National Bankruptcy Conference following the definition contained in Section 1(17) of the Chandler Act (Committee Print Analysis of H. R. 12889, p. 5) shows clearly that it was the intention of the drafters of this new definition to replace thereby the definition contained in Section 75(r) which was thought to be too broad. While the National Bankruptcy Conference was a non-legislative body, their comments on and analysis of the draft prepared by them showing their intention and purpose, it would seem, should be relevant material to be here considered by the Court (*Securities & Exchange Com'n v.*

Robert Collier & Co., 2 Cir. (1935), 76 F. (2d) 939, 941; *Coke v. Illinois Central R. R.* (1919), D. C. Tenn., 255 Fed. 190). And this draft presented by the Conference was the sixth culminating more than five years of study, deliberation and debate.¹⁸

Moreover the draft of Section 1(17) presented by the National Bankruptcy Conference was adopted without change in H. R. 8046 and was enacted by Congress in the Chandler Act.

This repeal of that part of Section 75(r) repugnant to Section 1(17) of the Chandler Act does not involve a change of the essential provisions of Section 75, but merely the change in the legislative definition of one of the terms employed in Section 75. Prior to the Chandler Act the definition of the term "farmer" for the entire Bankruptcy Act was found in Section 75(r). That was contrary to the arrangement of the Act, and somewhat anomalous, since as originally designed, the definitions of terms used in the Act were to be found in Section 1 of the Act. By the Chandler Act the logical arrangement was restored and the definition of the term "farmer" was put in Section 1(17) in substitution of Section 75(r). This could hardly be regarded as, nor referred to, as a change in Section 75 itself, although obviously the new definition affected the extent of the class of persons who might qualify as "farmers" under Section 75.

We think the comments of the House Committee on the Judiciary in its report that no change had been made in Section 75 are not to be taken to mean that the new defini-

¹⁸ * * * Successive drafts of the same act do not simply succeed each other as isolated phenomena, but the substitution of one for another necessarily involves an element of choice often leaving little doubt as to the reasons governing such choice. * * * A note on "Statutory Interpretation" Landis, 43 Harv. L. R. 886, 889.

tion of "farmer" in Section 1(17) of the Chandler Act was not to replace that contained in Section 75(r). So too the statement by the Senate Committee on the Judiciary that the Chandler Act did not cover Section 75. Neither could be taken as literally true since by the Senate amendments, concurred in by the House, Section 75 was expressly amended by Section 2 of the Chandler Act. Many other of the terms employed in Section 75 are now defined in Section 1 of the Chandler Act.

The interpretation adopted by the Circuit Court below carries out the purpose and intent of Congress to (1) provide a consistent and uniform definition of the term "farmer" throughout the Bankruptcy Act; (2) to retain only those parts of the Bankruptcy Act which were not inconsistent with the provisions of the Chandler Act; and (3) to provide and place in its logical place a new and better definition of the term "farmer", one "restricted to a proper scope". Does that interpretation defeat the broad and more general purpose of Congress embodied in Section 75 of the Act? To answer this question it is necessary to consider (1) the purpose or policy of Congress sought to be carried out by Section 75, and (2) the difference in the scope of the definition of the term "farmer" in Section 75(r) and that in Section 1(17) of the Chandler Act.

The broad purpose of Section 75 was to make available to distressed farmers the opportunity of financial rehabilitation. More specifically the statute was designed to enable a farmer to reach an agreement for composition or extension with the majority in number and amount of his creditors and upon failure of this, to obtain a moratorium for three years during which time he might remain in possession of his farm by payment of a reasonable rental, protected by the exclusive jurisdiction of the Bankruptcy

Court from foreclosure and other judicial proceedings, at the end of which three-year moratorium he might free himself from the burden of his debts by paying the appraised value of his farm. See *John Hancock Mut. L. Ins. Co. v. Bartels*, 1939, 308 U. S. 180, 84 L. Ed. 176; *Kalb v. Feuerstein*, 1940, 308 U. S. 433, 84 L. Ed. 370; *Wright v. Vinton Branch, etc.*, 1937, 300 U. S. 440, 81 L. Ed. 736. The purpose is that of conservation rather than a liquidation by forced sale.

When Section 75 was first enacted in 1933 a considerable body of law on the question as to who was a farmer under the Bankruptcy Act already existed. It had long been the policy of Congress, as embodied in Section 4(b) of the Act to exempt the farmer from involuntary bankruptcy proceedings. Section 4(b) provided that a natural person "engaged chiefly in farming or the tillage of the soil" was exempt from involuntary proceedings. Some Courts, prior to 1933, held the terms "farming" and "tillage" were synonymous (*Hart-Parr Co. v. Barkley*, 8 Cir. 1916, 231 Fed. 913; *Matter of Brown*, D. C. Mo. 1922, 234 Fed. 899; *Matter of Stubbs*, D. C. Wyo. 1922, 281 Fed. 568) while others concluded that the terms were not co-extensive. (*Robertson v. Dwyer*, 7 Cir. 1911, 184 Fed. 880; *In re Thompson*, D. C. Ia., 1900, 102 Fed. 287.)

To determine whether the debtor was chiefly engaged in farming or tillage of the soil, all of his activities and pursuits had to be considered. (*Am. Agricultural Chemical Co. v. Brinkley*, 4 Cir. 1912, 194 Fed. 411; *In re Disney*, D. C. Md. 1915, 219 Fed. 294; *In re Brown*, 9 Cir. 1918, 253 Fed. 357; *In re Macklem*, D. C. Md. 1927, 22 F. (2d) 426; *Harris v. Tapp*, D. C. Ga. 1916, 235 Fed. 918.) If it were found that the debtor was only secondarily engaged in some other occupation, and "chiefly" or primarily engaged in

farming or tillage of the soil he was exempt. Certain tests or criteria were developed by the Courts that were to be applied to a given case to determine the debtor's chief occupation or business. Such business or occupation would be that one of principal concern to him, on which he chiefly relied for a livelihood or means of acquiring wealth, and which was of some permanency in its nature. The amount of time or physical exertion devoted to a certain business or occupation (*In re Mackey*, D. C. Del. 1901, 110 Fed. 355), the amount of income, the fact that the greater part of his indebtedness was created in a certain business, and whether there had been an actual abandonment of another business or occupation, were factors to be considered. But it was impossible and impracticable to precisely define the facts which in all cases would determine the question, and each case had to be decided on its own peculiar facts and circumstances. (*In re Tyler*, N. D. Ia. 1932, 284 Fed. 152; *In re Mackey*, *supra*; *In re Glick*, 7 Cir. 1928, 26 F. (2d) 938.)

Mere ownership of a farm was not sufficient to exempt a debtor from involuntary proceedings (*In re Johnson*, D. C. N. Y. 1907, 149 Fed. 864; *In re Matson*, D. C. Pa. 1903, 123 Fed. 743), even though the farm be leased on shares. The debtor was held exempt, however, where incidentally a private banker (*Couts v. Townsend*, D. C. Ky. 1903, 126 Fed. 249; *In re Beiseker v. Martin*, D. C. Mont. 1921, 277 Fed. 1010), a storekeeper (*Rise v. Bordner*, D. C. Pa. 1905, 140 Fed. 566), or lawyer (*In re Hoy*, D. C. Ia. 1905, 137 Fed. 175), where he was principally engaged in farming. A retired farmer, since he no longer was chiefly engaged in farming, was not exempt. (*In re Matson*, *supra*.)

After the enactment of Section 75 in 1933, we find in Section 75(r), as amended in 1935, the words "primarily

bona fide personally" engaged in farming. The words "primarily-personally" would seem to have the same meaning as "chiefly" in former section 4(b) of the Act. (*In re Day*, D. C. Ill., 1935, 10 F. Supp. 229.) The term "bona fide" seems to be the statement of the existing requirement of the Courts that a debtor not have entered into agriculture merely to evade an involuntary adjudication. Some Courts allowed immunity on the theory that the change of occupation was made in good faith (*In re Folkstad*, D. C. Mont., 1912, 199 Fed. 363; *In re Inman*, D. C. Wyo., 1932, 57 F. (2d) 595), while other Courts somewhat arbitrarily held that the occupation at the time of acquisition of the debts was controlling. (*First Nat. Bank of Bode v. Williams*, 8 Cir., 1929, 31 F. (2d) 749; *Smith v. Brownsville State Bank*, 8 Cir., 1926, 15 F. (2d) 792; *Harris v. Tapp*, D. C. Ga., 1916, 235 Fed. 918.)

The phrase "the principal part of whose income is derived from farming operations" appears at first glance to be a provision that would include persons primarily engaged in another occupation, or none at all, such as retired farmers, absentee landlords who rent farm land, or indeed mortgage creditors whose chief income is interest paid by a farmer, none of which persons would have been classified as farmers under the Bankruptcy Act prior, at least, to 1933. The Courts, however, have not so interpreted that phrase. In the case of *In re Day*, D. C. Ill., 1935, 10 F. Supp. 229, it was held that there is little or no distinction between the phrases "engaged chiefly in farming", "personally engaged primarily in farming", and "the principal part of whose income is derived" from farming operations. Still another Court has interpreted the phrase to mean that the debtor must be engaged "primarily" in farming operations, and that the phrase "the principal part of whose income", etc., was inserted as a precaution against

bad years when forced to earn a livelihood from some other occupation. (*In re Hilliker*, D. C. Cal., 1935, 9 F. Supp. 948; *Sherwood v. Kitcher*, 2 Cir. 1936, 86 F. (2d) 750, 751.) And in *Shyvers v. Security First Nat. Bank*, 9 Cir. 1939, 108 F. (2d) 611 (cert. den. March 4, 1940, 60 S. Ct. 608), the Court interpreted the phrases to mean that a debtor had to be personally engaged in farming operations, the purpose of the phrase "or the principal part of whose income", etc., being to prevent outside additional personal operations or pursuits from defeating a debtor's status as a "farmer", provided his principal income continued to come from his personal farming operations. So also the case of *In re Olsen*, D. C. Ia., 1937, 21 F. Supp. 504, holds that the principal part of the debtor's income must be derived "from bona fide personal engagements in producing products of the soil."

Thus the Courts have not found that the intent of Congress was to give the second part of the definition in Section 75(r) the broad and literal effect which its language imports. Now, just as prior to 1933, the debtor must be engaged personally and primarily in farming operations.

It is equally clear, however, that there are two branches to the definition in Section 75(r). As was said by this Court in the case of *First Nat. Bank & Trust Co. v. Beach*, 1937, 301 U. S. 435, 438, 81 L. Ed. 1206, 1208:

"We do not try to fix the meaning of either of the two branches of this definition, considered in the abstract. The two are not equivalents. They were used by way of contrast. Occasions must have been in view when the receipt of income derived from farming operations would make a farmer out of some one who personally or primarily was engaged in different activities. A catalogue of such occasions might err for excess or defect, if made up in advance. * * *"

Without questioning this Court's pronouncement above quoted, it is submitted that in order to carry out the purpose of Section 75; i. e., the financial rehabilitation of distressed farmers as such (*In re Noble*, D. C. N. J., 1937, 19 F. Supp. 504), the requirements, found by some Courts in their interpretation of Section 75(r), that the debtor be personally and primarily engaged in farming operations, would be more within the spirit of the statute. (See the note, pp. 4-5 of the Committee Print Analysis of H. R. 12889.) " * * . While the above definition is essentially derived therefrom it is restricted to a proper scope."

And now we may see in what respects the definition in Section 1(17) of the Chandler Act differs from that of Section 75(r). As will be seen, the former both extends and restricts the scope of the latter, at least in so far as its literal content be considered.

Comparing the two definitions, it will be observed that the new definition omits the terms "primarily" and "*bona fide*". Instead it provides merely that "farmer" shall mean an individual "personally" engaged in farming or tillage of the soil, etc. Literally, therefore, this new definition requires the debtor to be personally engaged in farming or tillage, but it does not require that such farming operations be the "primary" or "chief" occupation or business of the debtor. The omission of the term "*bona fide*" would seem to be of no consequence in view of the decision that a change to the exempt class must have been made in good faith. (*First Nat. Bank of Bode v. Williams*, 8 Cir., 1929, 31 F. (2d) 749, 750.) But, in view of the policy and intent of Congress, it would seem that in spite of the omission of the term "primarily" the words "personally engaged" would be interpreted to mean personally and primarily engaged. In the case of a debtor personally engaged in dairy, poultry or livestock operations there is

no difficulty because of the qualifying "if" clause which requires that the principal part of the debtor's income be derived from such operations.

It would therefore seem that the only real difference between the old and the new definition lies in the use of the disjunctive "or" in the old as against the conditional "if" in the new. Under the old definition, taken literally, a person would seem to qualify as a farmer if the principal part of his income was derived from farming operations even though such person be neither primarily or personally engaged in farming. (As pointed out above the Courts have not interpreted the definition literally.) Under the new definition, however, a person personally engaged in dairy, poultry or livestock operations will qualify provided the principal part of his income is derived from such operations. The "if" clause, it seems, supplies the factor or test to determine whether the operations comprise the debtor's chief occupation or business. That requirement would seem to be clearly within the policy and spirit of Section 75 of the Act. If the policy of Section 75 is to provide means for the financial rehabilitation of distressed farmers, the application of its provisions to a person who was neither personally nor primarily engaged in farming operations although the principal part of his income be derived from such operations (carried on by a farmer) would seem to be neither contemplated by the Section nor necessary to carry out its policy.

Contrary to the view often expressed, there seems to be nothing novel in the fundamental principle of Section 75. Since as early as 1882 it has been recognized that under the bankruptcy power, conservation of the debtor's assets and not the sale thereof should be the chief purpose to be achieved in the national interest (*Warren, Bankruptcy in United States History*, pp. 152-159). And there would

seem to be no valid constitutional objection to the application of the principle of Section 75 to all debtors. Be that as it may, Congress in its wisdom, has seen fit to afford such remedy only to "farmers". And the determination of who is a "farmer" may be more effectually made under the definition contained in Section 1(17) of the Chandler Act than Section 75(r). Section 1(17) of the Chandler Act is certainly more in consonance with the general notion of who is a "farmer" than Section 75(r). We do not ordinarily speak of a person as a "farmer" unless he be personally and primarily engaged in farming operations.

It is suggested that the enactment of Section 75(r) (with the omission of reference to Section 74) in the Act of March 4, 1940 (54 Stat. 40) extending the effects of Section 75 to March 4, 1944, shows that Congress did not intend that Section 1(17) of the Chandler Act was ever to apply to Section 75. It would, however, be more reasonable to infer the contrary. If Congress had never intended to repeal Section 75(r) by Section 1(17) of the Chandler Act, it would not have again enacted Section 75(r). It is conceivable that following the decision of the Circuit Court below, Congress, realizing that Section 75(r) had been repealed, enacted it again in order to repeal Section 1(17) of the Chandler Act. For since, as thus reenacted, Section 75(r) still makes reference to Section 4(b), and Sections 379 and 484 being for the same purpose as Section 4(b), there is no section of the Bankruptcy Act to which Section 1(17) may apply after the 1940 Act.

Recalling the legislative history of the Act of March 4, 1940, the reenactment of Section 75(r) may well have been due to inadvertence. There was no discussion of the matter before any of the Committees nor on the floor of the House or the Senate. Nor did the National Bankruptcy Conference in any way intervene in the matter.

The promulgation of General Order No. 50(9) effective February 13, 1903 (305 U. S. App., p. 30) is not necessarily inconsistent with the interpretation of the statute made by the Circuit Court below, since the reference to Section 75(r) would be to that subsection "as amended".

Form in Bankruptcy No. 63, accompanying the General Orders in Bankruptcy, is clearly inconsistent with the interpretation of the statute by the Circuit Court below.

Both the General Order No. 50(9) and Form No. 63 were carried over without change from General Order L(9) promulgated April 17, 1933 (288 U. S. 643) and from the earlier Form No. 65 (288 U. S. 646). As suggested by the Circuit Court below, this may have been inadvertent (*Meek v. Centre County Banking Co.* (1924), 268 U. S. 426, 69 L. Ed. 1028).

The inclusion of Section 75(r) in the 1938 edition of the Judicial Code (11 U. S. C. 203(r)) as if unaffected by Section 1(17) of the Chandler Act is not conclusive. That Code is only presumptive evidence of the laws (1 U. S. C. 54(a)).

Petitioner's Brief

We are impelled to consider here that portion of Petitioner's brief entitled "Preliminary Considerations", pages 11-18 of the typewritten draft.

In our brief in opposition to the petition for certiorari filed in this case, page 6 thereof, we stated that the parties did not raise in the Circuit Court of Appeals below the question as to whether Section 1(17) of the Chandler Act had repealed Section 75(r) of the Bankruptcy Act in so far as the two were inconsistent.

Counsel for Petitioner in his brief, pages 11 to 13, now says that we did raise that question in the Circuit Court.

In support of that view he quotes excerpts from respondent's (appellee's) brief filed in the Circuit Court. That brief does not form a part of the record before this Court. We are mailing printed copies to the Clerk of this Court so that the full context may be available if the Court desires to examine it. For convenience we print in the appendix of our present brief the full context of Part III of respondent's (appellee's) brief below from which the excerpts quoted by counsel for petitioner are extracted, together with that division of that brief entitled "Assignments of Errors and Questions Involved".

An examination of said brief, or the parts thereof printed in the appendix, will show clearly that our former statement to the Court is correct.

Nor did the United States District Court for Puerto Rico consider the matter of the repeal of Section 75(r) by Section 1(17) of the Chandler Act. The Opinion, Findings of Fact and Conclusions of Law and Decree of the District Court (R. 17-25) clearly show that. See also paragraph IV of the Motion to Dismiss (R. 8). The extraction of isolated excerpts from the colloquy between the District Court and counsel during the hearing, is not a fair way of showing what the District Court thought, considered or held. Yet this is the method employed in petitioner's brief, pages 14-18 thereof. Nor did we know that the transcript of the testimony formed a part of the record here. We have not seen the copy thereof filed here by petitioner.

Any lawyer or any Court would undoubtedly be very happy to receive the credit for the thorough and scholarly opinion of the Circuit Court of Appeals below. In this case, however, neither we nor the District Court can justly claim that credit.

We also think it desirable to make reference to the "Conclusions" contained in Petitioner's brief, pages 81-

84 thereof. We understand the language there used petitioner contends (1) that the Circuit Court of Appeals below erred in holding that the definition of the term "farmer" applicable to proceedings under Section 75 was contained in Section 1(17) of the Chandler Act and (2) that the applicable definition, on the contrary, was contained in Section 75(r) of the Bankruptcy Act. Assuming that this Court agrees with those contentions, petitioner then contends further that (3) this cause should be remanded to the United States District Court for Puerto Rico with instructions to reinstate her proceedings under Section 75 of the Act and (4) declare null and void the foreclosure sales of properties of the Comunidad José J. Benitez e Hijos and the corporation Benitez Sugar Company made under decrees of said District Court as a Court of Equity.

We are constrained to ask petitioner when and by what Court is it to be decided whether petitioner qualifies as a "farmer", assuming, as contended by petitioner, that Section 75(r) did contain the applicable definition of "farmer". The Circuit Court below expressly refrained from deciding that question (R. 68). As we understand the decision of the said District Court, its decision was to the effect that petitioner did not qualify as a "farmer" under Section 75(r), although petitioner thinks that it merely decided, as did the Circuit Court, that petitioner did not qualify as a "farmer" under Section 1(17) of the Chandler Act.

If this Court should hold as erroneous the interpretation of the statute by the Circuit Court of Appeals below, we presume that it is not the intention of this Court to decide whether petitioner was a farmer as defined under Section 75(r). We so presume, because (1) we understand the issue here is limited to the single question as to what

was the applicable definition of the term "farmer" and (2) because the entire record of the case in the Circuit Court of Appeals has not been brought here.

If, therefore, this Court concludes that the Circuit Court erred in its interpretation of the statute, it would seem that this case be disposed of by remanding it to the Circuit Court of Appeals with instructions. Exactly such a disposition of the case was made by this Court in the case of *American Surety Co. v. Marotta*, 1933, 287 U. S. 513, 518, 77 L. Ed., 466, 469. There this Court said:

"As the Circuit Court of Appeals, upon construction of Sections 1(9) and 3a(1) which we hold erroneous, disposed of the case without deciding other questions there raised, the decree will be reversed and the case will be remanded to that Court for further consideration, and proceedings in harmony with this opinion."

If this Court should decide that the interpretation of the statute by the Circuit Court of Appeals was erroneous, and should resolve to determine whether petitioner qualified as a "farmer" under Section 75(r), it undoubtedly would afford the parties an opportunity to be heard on that question, and would order the complete record in the Circuit Court of Appeals to be sent here.

Finally, we do not understand, as petitioner contends, that the reenactment of Section 75(r) by the Amendatory Act of 1940 extending the effective terms of Section 75 to March 4, 1944, means that the applicable definition of the term "farmer" for the purposes of petitioner's proceedings under Section 75 is contained in Section 75(r). The Act of 1940 is not retrospective, and if the interpretation of the Circuit Court of Appeals was correct at the time it was made, the subsequent statute abrogating Section 1(17) of the Chandler Act and again enacting Section 75(r)

would not, it seems, have the effect of reinstating petitioner's proceedings even though she qualified as a farmer as defined in Section 75(r). Ordinarily statutes establish rules for the future and they will not be applied retrospectively unless that purpose plainly appears. (*Brewster v. Gage*, 1930, 280 U. S. 327, 74 L. Ed. 457.)

In Conclusion

In the final analysis, the single problem here presented is whether at the time petitioner filed her petition for composition or extension under Section 75 of the Bankruptcy Act in the District Court, the applicable definition of the term "farmer" was to be found in former subsection (r) of Section 75 of the Bankruptcy Act, or in Section 1(17) of the Act as amended by the Chandler Act.

The Circuit Court of Appeals below held that it was Section 1(17) which provided the definition of the term. And it is submitted that its conclusion was correct.

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

WALTER L. NEWSOM, JR.,
Attorney for Respondent.

J. HENRI BROWN,
Of Counsel.

April, 1941.

Appendix

The following is taken from respondent's (appellee's) brief filed in this case in the Circuit Court of Appeals below. Printed copies of the brief have been sent to the Clerk of this Court.

From pages 15-16 of said brief:

"Assignment of Errors and Questions Involved"

Appellant has seventy-five specific assignments of error, the great bulk of which, in our opinion, are frivolous and present questions not reviewable on this appeal.

The main questions in the case are whether the District Court committed manifest error in holding that appellant was not a farmer as defined in Section 75(r) of the Bankruptcy Act; that appellant's position was not filed nor prosecuted in good faith; that she presented no feasible plan for extension and composition; that the properties and affairs of the Community José J. Benitez e Hijos (and the corporation Benitez Sugar Company) could not be properly administered in bankruptcy under appellant's petition, and that appellant's poultry business was solvent.

Appellee takes the position that the District Court committed no manifest error in its holdings.

From pages 32-38 of said brief:

POINT III

Appellant is not a farmer as defined in Section 75 of the Bankruptcy Act.

A. "Farmer" as defined in Section 75 of the Act:

Sub-section (r) of Section 75 of the Act (11 U. S. C. A. 103(r)) defines a "farmer" as that term is used

in said section. In so far as here relevant, it reads as follows:

(1) "For the purposes of this section, Section 4(b) and Section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, (2) or the principal part of whose income is derived from any one or more of the foregoing operations."

This sub-section (r) was enacted in 1935, by the Amendatory Act which we have discussed in Point II(b) hereinabove. (Act of August 28, 1935, c. 792, 14 Stat. 943.) Since that time Congress has passed the Amendatory Act of June 22, 1938 known as the Chandler Act (52 Stat. 840), effective by its terms September 22, 1938.

The said Chandler Act added a new sub-section (17) to Section 1 of the Act (11 U. S. C. A. 1 (17)), which provides that, unless inconsistent with the context, the term:

" 'Farmer' shall mean (1) an individual personally engaged in farming or tillage of the soil and (2) shall include an individual personally engaged in doing farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations."

As pointed out by the Supreme Court the definition of a "farmer" in Section 75(r) has two different branches. In the case of *First National Bank & Trust Co. v. Beach*, 301 U. S. 435, 438-439, 81 L. Ed. 1206, 1208, that Court said:

“* * * The two (branches) are not equivalents. They were used by way of contrast. Occasions must have been in view when the receipt of income derived from farming operations would make a farmer out of someone who personally or primarily was engaged in different activities. * * *”

and in the case of *In re Horner*, 104 F. (2d) 600, 602 (May, 1939) the Court, after discussion of the *Beach* case, *supra*, pointed out that under the language of the Act the test of whether petitioner was a farmer must be for the purposes of that case as follows:

“* * * Was the petitioner either primarily bona fide personally engaged in producing products of the soil or was the principal part of his income derived from his activities in producing products of the soil?”

Referring to the second branch of the definition the Court in the case of *In re Davis*, 22 F. Supp. 2, 13, aptly observed:

“* * * What were the foregoing operations? In each instance a personal operation.”

We submit that the test to determine who is a “farmer” under the Act may be stated as follows:

1.—Is the debtor primarily bona fide personally engaged in the farming operations?

or

2.—Is the debtor personally engaged in any farming operations from which he derives the principal part of his income?

As to the meaning of the word “primarily” as used in the first branch of the definition we cannot add to the language used by Judge LINDLEY (District Court, E. D. Illinois) in the case of *In re Day*, 10 F. Supp. 229, 231, which we quote:

“ * * * ‘Primarily means basically or in such a manner as to be of first importance.’ * * * ”

And with respect to the “principal part” of one’s income as used in the second branch of the definition, we are told, in the same case:

“ * * * Principal means main, chief, of first importance.”

The term “income” as used in the second branch of the definition obviously means “net income” as pointed out in the following language taken from the decision in *Sherwood v. Kitcher* (Second Circuit), 86 F. 750, 751:

“ * * * In this aspect of the case he asks us to count the gross return from his farm and not the net. That would falsify the statute; the seed, the manure, the tools, the draught animals, the wagons, the planters and reapers; all these and more must be paid for out of the gross return, before any ‘income’ results. * * * ”

As said in the *Beach* case, *supra*, however, in order to determine whether one is a “farmer” as defined in Section 75(r):

“ * * * In every case the totality of the facts is to be considered and appraised. * * * ”

Do the facts show appellant to be a “farmer” under either branch of this statutory definition?

B. Appellant’s Poultry Business.

It is submitted that appellant is not “primarily engaged” in the poultry business. The operations in that respect which she carries on in her home in the city of Ponce are not a matter of basic and prime importance to her. She started it because she liked it, no doubt as a hobby, just as a housewife might take up gardening

or some other activity. "She likes and enjoys it", and thinks "she is pretty good at it"; got books, from the States, follows what the rules say and what she ought to do. She is not a businesswoman; she had a finishing school education. She keeps no accounts but only notes and knows at the end of each month what she got. She never thought of her income therefrom as "annual income".

Her poultry business is carried on on a very small scale. Her schedules showed 47 hens, 6 roosters and 176 pigeons, but by the time of the hearing on the motion to dismiss, she had increased this number to 110 chickens and about 200 pigeons, although the record shows no amendment of her schedules. That was an increase in stock of over 100%.

The record fails to show that she devoted any substantial part of her time or energies to her poultry.

Obviously, she does not derive the principal part of her income from her poultry. "She gets about \$50 or \$60 monthly all together as profits", she says. But her husband gives her over \$200 per month to cover house service and everything; "she gets whatever she wants from him and whenever she needs money she gets it from him."

As said in *Swift vs. Mobley*, 28 F. (2d) 610, "The raising of chickens about his home place was on too small a scale to constitute an occupation or means of living, . . ."

In her proposal for extension appellant makes no mention of her poultry business except that she states that expected conditional payments under the Sugar Act of 1937 will permit "further development of her poultry business on a much larger scale, . . ." And in stating what her estimated net income will be in succeeding years she refers only to the properties in Vieques; not one word is said about estimated future net income from her poultry business.

Certainly Congress in enacting the far-reaching provisions of Section 75 of the Act designed to save

farmers from losing their homes and means of livelihood and to lighten their burdens from billions of dollars of farm mortgage debts, did not have in mind such a case as appellant and her poultry business.

She has no debts with respect to or growing out of her poultry except an account of sixteen odd dollars. And she pays cash for everything. Although her schedules show no cash on hand she thereafter acquired the additional chickens and pigeons already mentioned.

As the District Court found, the poultry business is solvent and produces profits. It appears that she is quite able to meet her debts as they mature.

C. *Appellant's Farming Operations in Vieques.*

These refer to the sugar enterprise of Benitez Sugar Company and the Community José J. Benitez e Hijos and have no relation nor connection whatever with appellant's poultry business.

Appellant never participated in the agricultural operations of the Community nor the management thereof; she has never spent anything personally to cover said operations or taxes on the properties. Her intervention has been limited entirely to receiving any profits which corresponded to her. She apparently knows nothing of the affairs and operations; she did not know positively that from 1933 to 1936 appellee bank was in possession of and operating the properties of both the Community and the corporation.

Appellant exercises no control over planting or employment of labor (See *In re McCoy*, 17 F. Supp. 972). She never resided on the properties in Vieques (See *In re Davis*, 22 F. Supp. 12; *In re Olsen*, 21 F. Supp. 504). It does not appear that she devoted any of her time or energies to the sugar enterprise.

Where a landowner merely leases his farm that does not make him a farmer (*Rudy vs. Federal Land Bank of Baltimore*, 91 F. (2d) 549; *Beamesderfer vs. First National Bank and Trust Co.*, 91 F. (2d) 491;

In re Davis, supra, In re Day, supra, nor does the mere fact of ownership of farm land make one a farmer. *Baxter vs. Savings Bank of Utica*, 92 F. (2d) 404; *In re Noble*, 19 F. Supp. 504; *In re McCoy, supra*).

Here it was the Community as such which was engaged in farming (and in manufacturing too) if any one was so engaged, not appellant. Revenues received by appellant were not devoted to paying any Community expenses, nor did appellant ever furnish any funds for the business and affairs of the Community. She was interested only in the receipt of profits. As said in *In re Olsen*, 21 F. Supp. 504, 508, appellant's intervention was at most "a milking process".

Nor indeed had appellant ever been a farmer. She was a housewife, running her home in the City of Ponce; she was in no sense trained or experienced as a farmer (See *Morrison vs. Federal Land Bank of Louisville*, 105 F. (2d) 279, 281).

Did the receipt of any income from the sugar enterprise in Vieques make appellant a farmer? Any revenue which she may have received certainly did not arise out of her personal activities or operations as a farmer. And this is the crucial test under the authorities as heretofore shown.

But she never received any income from farming operations. The \$3,000 which she received in 1933 was for signing papers for the extension of the Community contract. The record before this Court does not show who paid her the \$3,000. (We pointed out hereinabove that there was evidence before the District Court other than that which has been brought before this Court on appeal.) While this revenue may have been the result of appellant having been an owner of one-twelfth undivided interest in the Community properties, it certainly did not derive from any farming operations of appellant, nor of the Community, nor does it appear to have been paid by the Community.

Nor was the amount of \$17,500 (\$20,000 as the appellant says) of the benefit payments for 1934-35 in any

sense net income from appellant's farming operations. The benefit payments were not even net income of the Community. If the whole amount thereof (\$101,443.20) had been received by the Community as such, its farming operations for 1934-35 would have still showed a loss. And as a matter of fact it appears that appellee Bank did credit the advances made by it to finance the 1934-35 crop with the entire amount of the benefit payments, although it allowed the members of the Community to retain for themselves \$45,000 thereof. And that \$45,000 was distributed among them according to their own agreement, not according to the amount of their shares in the Community. If the whole amount of the \$45,000 had been distributed according to their shares (see Section 327 of the local Civil Code) appellant would have received one-twelfth thereof, that is, \$3,750. The District Court found that appellant had received \$17,500 (or \$20,000) by virtue of an agreement, not from farming operations (Rec. p. 234).

It may be pointed out also that the properties during the crop year 1934-35 were operated by appellee, and it was the appellee who necessarily made the contract for restriction of production in consideration of which the bounty or benefit payments were made. (See the *Agricultural Adjustment Act* of May 12, 1933, as amended April 7, 1934, especially Title I, Sections 1 and 8, 48 Stat. 1, 48 Stat. 34, and 48 Stat. 528.)

And obviously some part of the total of the bounty was payable to the corporation. The amount of this gross return to the corporation could not, as against corporate creditors, have been treated as net income by the stockholders. Nor could the part thereof corresponding to the Community have been treated as net income by the members thereof as against Community creditors (*The Bank of Nova Scotia vs. Carle Dubois, supra*). And in applying the second branch of the definition of "farmer" by Section 75(r) of the Act, the term "income" as therein used means "net income"

not "gross returns". (See *Sherwood vs. Kitcher*, 86 Fed. 750, 751 cited *supra*.)

While it is true that appellant would undoubtedly not have received the payments of \$3,000 in 1933 and \$17,500 (\$20,000) in 1937, had she not been the owner of a one-twelfth undivided interest in the properties of the Community, such amounts represented neither income (net) from her own personal farming operations, nor from farming operations of the Community (nor of the corporation).

Appellant says that the Secretary of Agriculture decided the \$17,500 which she received belonged to her because of her farming operations, but it is submitted the record shows the contrary.

It is submitted that the appellant in no way qualifies as a "farmer" under the Act. The District Court's findings so show, and they are not to be overturned unless there is manifest error. (*Island Improvement Co. vs. Holman*, 99 Fed. (2d) 63.)

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SUPREME COURT OF THE UNITED STATES.

No. 90.—OCTOBER TERM, 1940.

Carlota Benitez Sampayo, Petitioner, }
 vs. }
 The Bank of Nova Scotia, Respondent. }

On Writ of Certiorari to
 the United States Circuit
 Court of Appeals for the
 First Circuit.

[May 12, 1941.]

Mr. Justice MURPHY delivered the opinion of the Court.

To arrange a composition or an extension as a farmer-debtor, petitioner filed a petition in October, 1938, under § 75 of the Bankruptcy Act (47 Stat. 1467, 1470; as amended 48 Stat. 925; *Id.*, 1289; 49 Stat. 246; *Id.*, 942). Failing to secure the assents required by § 75(g), petitioner amended her petition in November, 1938, to proceed under § 75(a). Respondent then moved to dismiss the petition on the ground that petitioner was not a "farmer" and therefore was not entitled to the relief afforded by § 75(a). After a hearing, the District Court sustained the motion.

The Circuit Court of Appeals affirmed. It held that the formula for determining whether petitioner was a farmer was to be found in § 1(17) of the Chandler Act of 1938 (52 Stat. 840, 841), and that petitioner could not be regarded as a farmer within its terms. 109 F. (2d) 743, on rehearing, 109 F. (2d) 750. Because the decision was substantially inconsistent with Order 50(9) of the General Orders in Bankruptcy (305 U. S. 677, 710), we granted certiorari.¹ 311 U. S. —.

The ultimate question, of course, is whether petitioner may proceed under § 75(a) as a farmer-debtor, but for present purposes the problem is to select the definition of "farmer" which is applicable to persons petitioning for relief under § 75.

1 Insofar as material here, Order 50(9) reads: " . . . The petition shall show to the satisfaction of the district court that the decedent at the time of his death was a farmer within the meaning of subdivision (r) of section 75. . . ."

The Bankruptcy Act contains two definitions of the term "farmer". Section 1(17) of the Chandler revision provides: "'Farmer' shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the productions of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations."

Section 75(r), as amended in 1935 (49 Stat. 946) provides: "For the purposes of this section, section 4(b), and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer. . . ."

Starting with the premise that only one of the definitions can stand, respondent contends that § 1(17) is an implicit repeal of § 75(r). To support the contention, respondent points to the obsolete reference in § 75(r) to § 74, and to a statement in a committee report which is said to indicate that Congress intended the definition in § 1(17) to measure the applicability of § 4(b) to persons who claim to be farmers.²

The argument ignores the plain import of § 75(r). The meaning of the phrase "for the purposes of this section" is hardly open to question. Obviously, it is neither impossible nor necessarily inconsistent to prescribe one definition for a particular section or sections and another for the balance of the Act. Nor is the applicability of § 75(r) to proceedings under § 75 seriously placed in doubt because the former section refers to a section which no longer exists under that number and to a section which now may be governed by § 1(17). The only question here is whether § 75(r) or § 1(17) is applicable to § 75.

² The latter argument, upon which we express no opinion, is grounded on the statement in H. Rep. No. 1409, 75th Cong., 1st Sess., p. 6, which runs: "The amendment of May 5 (sic), 1935 . . . extends the meaning of the term 'farmer'. . . . Correspondingly, section 4 of the act is amended by

Section 75, with immaterial differences, first appeared in the distressed-debtor legislation of 1933. 47 Stat. 1467, 1470-1473. Designed for a particular purpose, the relief of hard-pressed farmers, it was regarded as a special and temporary enactment. See § 75(c); compare S. Rep. No. 1215, 73d Cong., 2d Sess., p. 3; H. Rep. No. 1898, 73d Cong., 2d Sess., p. 2. In 1938 its time limit was extended to 1940. 52 Stat. 84, 85. At that time a special committee held extensive hearings on a proposal to make § 75 a permanent part of the Bankruptcy Act, and finally concluded that the section should be continued only as temporary legislation. Hearings before Special Subcommittee on Bankruptcy of the Committee on the Judiciary, 75th Congress, 2d and 3d Sessions; see also H. Rep. No. 1833, 75th Cong., 3d Sess., p. 2; S. Rep. No. 899, 75th Cong., 1st Sess.; H. Rep. No. 1658, 76th Cong., 3d Sess., p. 2. Naturally enough, legislation drafted for such a purpose carried its own test for determining the persons to whom it should apply.

When the proposed revision of 1938 was before a Senate Committee, Representative Chandler, the proponent of the bill, stated: "We did not touch [§ 75] and it is not affected by this Act." Discussing the alterations in existing statutes worked by the new act, the House Report laconically observed that there was "no change" in § 75. H. Rep. No. 1409, 75th Cong., 1st Sess., p. 144. Somewhat less briefly, the Senate Report stated: "Section 75 relates to agricultural compositions and extensions. These expire by limitation and are, therefore, not covered by the bill." S. Rep. No. 1916, 75th Cong., 3d Sess., p. 18.

The Chandler Act, a careful and comprehensive revision of bankruptcy legislation, was the product of several years of thoughtful study. See 81 Cong. Rec. 8646-8649. One of its avowed purposes was to clarify or remove inconsistent and overlapping provisions. See H. Rep. No. 1409, 75th Cong., 1st Sess., pp. 1-3. As a part of this comprehensive revision, numerous definitions were overhauled or inserted for the first time. Among the latter was § 1(17). See H. Rep. No. 1409, *supra*, p. 6. But § 75(r) also was

substituting the phrase 'a farmer' for the language 'a person engaged chiefly in farming or the tillage of the soil'. Pursuant to this purpose of Congress to expand the meaning of the term, it would seem advisable to formulate a new definition and to include it in section 1 as clause (17)."

left in the Act, and, as already indicated, its existence was not unknown to the revisors. Its very presence in the statute after the revision is persuasive evidence that § 1(17) was not intended to govern proceedings under § 75.

We conclude that petitioner's activities must be tested by the definition in § 75(r) rather than by the one in § 1(17). The judgment is reversed and the cause is remanded to the Circuit Court of Appeals for consideration of other questions in light of our decision.

It is so ordered.

Mr. Justice STONE did not participate in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.